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**2 UNITED STATES BANKRUPTCY COURT**

**3 | SOUTHERN DISTRICT OF NEW YORK**

4 Case No. 12-12020-mg

**6 | In the Matter of:**

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**8 RESIDENTIAL CAPITAL, LLC, et al.,**

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**10 | Debtors.**

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14 | United States Bank

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16 | New York, New York

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18 | September 19, 2012

19 | Page

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21

22 | BEFORE

23 HON. MARTIN GLENN

24 U.S. BANKRUPTCY JUDGE

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1  
2 Doc# 1429 Conference on the Status of Discovery and Other  
3 Matters Related to Debtors' Motion Pursuant to Fed. R. Bankr.  
4 P. 9019 for Approval of the RMBS Settlement Agreements (related  
5 document(s)320)

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2                   **P R O C E E D I N G S**

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2                   THE COURT: All right. Please be seated. We're here  
3 in Residential Capital LLC, number 12-12020.

4                   Mr. Princi?

5                   MR. PRINCI: Good morning, Your Honor. Anthony Princi  
6 of Morrison & Foerster on behalf of the debtors. Your Honor,  
7 just to make sure that we're starting off on the same page, I  
8 just want to confirm that the Court has received the documents  
9 which were filed yesterday afternoon into last evening from  
10 various parties, so as the Court is -- by my account, Your  
11 Honor, the debtors filed, initially, a status report. That was  
12 followed by a response of the creditors' committee --

13                  THE COURT: Mr. Princi, let me assure you, despite the  
14 fact that I spent two days observing the New Year and,  
15 therefore, didn't see anything until very early this morning, I  
16 have reviewed everything.

17                  MR. PRINCI: Okay. Then I'll commence. Judge, I  
18 think there are three main disputes for the Court to decide.  
19 One is the question of whether the debtors fail to  
20 substantially comply with the scheduling order. And to narrow  
21 that, I think the -- putting aside the nits and gnats, I think  
22 the fundamental allegation is that the loan files that we  
23 produced were produced after the ten-day period called for by  
24 the scheduling order.

25                  Number 2, I believe, is the question of whether now

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1       that a second amended settlement agreement has been executed,  
2       been circulated to the parties, and that second amended  
3       settlement agreement removes the HoldCo election, whether at  
4       this junction in the case alter ego discovery is necessary in  
5       connection with the Court's adjudication of the 9019 motion.

6                   And number 3, whether depositions of the principal  
7       people on behalf of the debtors, which consist mostly of the  
8       in-house lawyers at the debtor and myself and a couple of my  
9       colleagues at Morrison & Foerster, whether depositions of those  
10      people should be taken forthwith, in connection with the  
11      adjudication of the 9019 motion.

12                  I believe those are, fundamentally, Your Honor, the  
13      open issues for the Court. Let me --

14                  THE COURT: When I read the papers, the responses to  
15      your status report have focused heavily on the production of --  
16      search for and production of e-mails, not only for Morrison &  
17      Foerster lawyers, which has either been done or is in the  
18      process of being done; several other Morrison & Foerster  
19      lawyers were specifically identified. But additionally, the  
20      issue of whether there has been a search for e-mails of --

21                  MR. PRINCI: Other people at ResCap.

22                  THE COURT: -- people from the debtors but also from  
23      AFI.

24                  MR. PRINCI: Okay.

25                  THE COURT: That seemed to me -- I mean, I'll tell you

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1 quite honestly, Mr. Princi, it seemed to me that the issue  
2 about the production of the loan files -- yes, it was  
3 important, but it didn't seem to me to be the big issue today.

4 MR. PRINCI: Okay. Let me address, Judge, that point  
5 and then I think that'll dovetail into the question of  
6 depositions as well. So contextually, Judge, what we have is a  
7 situation where the question that will be before the Court when  
8 the hearing is held is whether an 8.7 billion dollar allowed  
9 claim for the 392 trusts that are involved in that settlement  
10 is reasonable. And the analysis of that issue is one that has  
11 been ongoing for quite some time and that, we believe, is  
12 independent from the collateral questions of who said what to  
13 whom in the negotiations.

14 We have asked the parties for a while to reconsider  
15 their position with respect to that with a view that, first,  
16 presumably, it would inform their judgment as to whether to  
17 pursue that line of discovery if they first consider whether  
18 the 8.7 billion dollars is reasonable. For example, if one  
19 were to conclude, on their part, that the 8.7 billion dollar  
20 proposed claim is outrageously high -- outrageously high --  
21 they can then presumably allege that the possible reason for  
22 why that's outrageously high has to do with their theory of  
23 collusion which, simply stated, is: Ally is the parent company  
24 of ResCap. ResCap, at the time of the petition, entered into  
25 not only the RMBS settlement agreement but also the plan

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1 support agreement. Therefore, ipso facto, Ally was pulling the  
2 strings of its puppet, ResCap, to get ResCap to settle for the  
3 amount in question.

4                   But presumably, what people on the other side would  
5 want to do is first figure out whether 8.7 is within the realm  
6 of reasonableness. So we have taken the position, Judge, for a  
7 while, that not only does --

8                   THE COURT: Let me ask you this --

9                   MR. PRINCI: Yes?

10                  THE COURT: -- Mr. Princi. When I read your status  
11 report, you seemed quite offended that the committee and others  
12 have embarked, late in your view, on an effort to depose the  
13 negotiators of the settlement. When I read Mr. Bentley's  
14 response, he set out that for a very considerable period of  
15 time, in discussions with debtors' counsel, they agreed to  
16 defer, in the first instance, the issue of discovery from the  
17 negotiators. But they say it's hardly a surprise or news to  
18 your colleagues that the potential for that discovery has been  
19 on the table virtually from the start of these proceedings  
20 regarding approval of the RMBS settlement.

21                  MR. PRINCI: Well, Judge, it was a surprise in two  
22 ways. Number 1, we never would expect a constituency that's  
23 looking out for the interest of the estate to want to  
24 potentially jeopardize --

25                  THE COURT: They're looking out for the constituency

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1       as their creditors. That's their primary responsibility, is to  
2       look out for the unsecured creditors. And you're supposed to  
3       be looking after the debtors. And you're obviously at  
4       loggerheads with a whole group of constituents.

5                   MR. PRINCI: I stand corrected and you're absolutely  
6       right. We look -- it is our obligation to look at the  
7       interests of all the estates. It is their obligation to look  
8       into the interest, solely, of the unsecured creditors. My  
9       point, Judge, is this. The sale that we have teed up  
10      unquestionably is advantageous to the creditors -- the  
11      unsecured creditors. So we did not anticipate having  
12      understood -- we thought they understood us in saying, look,  
13      make your assessment first of whether this is reasonable or not  
14      before you launch into something that'll get us so  
15      sidetracked --

16                  THE COURT: Look, you agreed on a discovery schedule  
17       that requires that all fact discovery be completed by September  
18       24th. We're on September 19th. When do you expect them -- if  
19       they believe that the arm's-length nature of the  
20       negotiations -- a factor identified in In re: Iridium  
21       Operating, the Second Circuit's decision -- on what are the --  
22       they set out seven nonexclusive factors for court's to consider  
23       in deciding whether to approve the settlement. When is it  
24       supposed to do that discovery if September 24th is the current  
25       cutoff date for fact discovery?

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1                   MR. PRINCI: Judge, let me make clear. We do not  
2 believe that they should be permitted to take that kind of --  
3 those depositions. But if they are, Judge, this case is going  
4 to change dramatically. We will have to put off -- and we  
5 simply -- you're talking about taking the depositions of the  
6 people who run these cases. I was going to use the word brain  
7 trust but since I'm involved in there, I didn't want to be  
8 presumptuous. But the people who run these cases, Judge, are  
9 the in-house lawyers at ResCap and the financial -- the  
10 principal people at FTI and the principal people at Morrison &  
11 Foerster. And those are the depositions that people want to  
12 take.

13                  THE COURT: Well, look, I am very wary of ever  
14 authorizing the depositions of lawyers in a case. And I'm  
15 mindful of how the Second Circuit, quite properly, has dealt  
16 with the issue. But your own submission indicates that the  
17 principal negotiators of the RMBS settlement were the lawyers.  
18 It's -- was there one senior executive from the debtors who was  
19 present or heavily involved throughout the negotiations and the  
20 completion of the RMBS settlement, which I guess takes us -- I  
21 still haven't seen this amendment that you've now advised me  
22 about. As of the status reports, at least, it was still  
23 anticipated but -- even in your status report, once again it  
24 was anticipated but had not happened.

25                  Okay. Is there a senior executive from any of the

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1 debtors, is there a senior executive from AFI who participated  
2 substantially in the negotiations of the RMBS settlement? What  
3 you've -- your own papers say the principal negotiators were  
4 the lawyers and you say lawyers shouldn't be deposed. But you  
5 haven't said that X, Y or Z were principal negotiators from the  
6 debtors. So you have not really provided an alternative. If  
7 there's to be discovery of -- regarding the settlement  
8 negotiations, that there is one or more people who are not  
9 acting as lawyers, who were acting -- they may be lawyers but  
10 they were acting in a business capacity, who were substantially  
11 involved in the settlement negotiations. Can you answer that?

12                  MR. PRINCI: Yes. Your Honor, I believe that the  
13 businesspeople are lawyers, okay?

14                  THE COURT: That's okay. I mean --

15                  MR. PRINCI: And I think what the issue comes down to,  
16 Judge, is that we don't believe that the law that Your Honor  
17 referenced -- in other words, the -- one of the seven factors  
18 in Iridium is eclipsed by the other law in this circuit with  
19 respect to requests to depose the lawyers of --

20                  THE COURT: Your view; not necessarily my view. But  
21 let's get back --

22                  MR. PRINCI: Okay.

23                  THE COURT: Was there -- was there a senior executive,  
24 acting in a business capacity, for any of the debtors that was  
25 substantially involved in the settlement negotiations? It's

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1 fine that they're a lawyer. If they're acting in a business  
2 capacity, they shouldn't be exempt from discovery. Is there  
3 someone?

4 MR. PRINCI: There is someone.

5 THE COURT: Who is it?

6 MR. PRINCI: That's Mr. Cancelliere.

7 THE COURT: How do you spell that?

8 MR. PRINCI: C-O-N-C-I-L-L-I-E-R-E, (sic) if I'm not  
9 mistaken.

10 THE COURT: And what is his -- what was his title?

11 MR. PRINCI: His title -- excuse me one second, Your  
12 Honor. Pardon me, Judge. That's C-A-N --

13 THE COURT: Okay.

14 MR. PRINCI: -- C-I-L-L-I (sic) --

15 THE COURT: Yes. And what is --

16 MR. PRINCI: -- E-R-E.

17 THE COURT: What is his position?

18 MR. PRINCI: He's a mortgage risk officer.

19 THE COURT: That doesn't sound like a legal capacity  
20 to me.

21 MR. PRINCI: No, no. I'm saying he is -- I'm saying I  
22 tried to come up with somebody who wasn't a lawyer.

23 THE COURT: And he -- and Mr. Cancelliere was  
24 substantially involved in the negotiations of the settlement,  
25 the RMBS settlement?

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1                   MR. PRINCI: Can I confer with my client just for a  
2 moment, judge?

3                   THE COURT: Yeah, go ahead.

4                   MR. PRINCI: Yes, Your Honor.

5                   THE COURT: And had you provided Mr. Cancelliere's  
6 name in the role and a description of the role he played in the  
7 RMBS settlement to the committee and the other parties-in-  
8 interest who were seeking such discovery?

9                   MR. PRINCI: I don't want to speak off the top of my  
10 head. But now I can. Yes.

11                  THE COURT: Go ahead, Mr. Princi.

12                  MR. PRINCI: All right, Your Honor. I don't -- I  
13 understand where Your Honor may well be going but I do want  
14 to --

15                  THE COURT: I don't know where I'm coming out of this,  
16 you know? I spent a lot of hours starting very early this  
17 morning reading a lot of stuff, okay?

18                  MR. PRINCI: I'm sorry, I just -- did you say you --

19                  THE COURT: I have not decided where I'm coming out.

20                  MR. PRINCI: Thank you, Your Honor. Okay. Then let  
21 me, Your Honor, try to suggest what we think would be a  
22 balanced approach here and --

23                  THE COURT: Let's -- before we get to the balanced  
24 approach. What's -- your view, obviously, is that -- first  
25 off, tell me when the amended RMBS settlement was signed?

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1                   MR. PRINCI: You're talking about the one we just --  
2 the second amended?

3                   THE COURT: Whatever it is you think the settlement is  
4 today --

5                   MR. PRINCI: Oh, excuse me, yesterday.

6                   THE COURT: -- when was it signed?

7                   MR. PRINCI: Yesterday. Pardon me, Your Honor.

8                   THE COURT: And it takes the HoldCo election out.

9                   MR. PRINCI: It does, Your Honor.

10                  THE COURT: What other substantive changes does it  
11 make?

12                  MR. PRINCI: It makes clear that the HoldCo is not the  
13 subject of the releases that are provided in the agreement.  
14 And further, the way it operates is that, to the extent that  
15 there is an adjudication by this Court after the filing of a  
16 proof of claim and overruling any objections thereto, to the  
17 extent there's an adjudication by this Court that any claimant  
18 does have a derivative claim against the HoldCo, based on  
19 whatever derivative theory, alter ego or otherwise, and it  
20 further provides that such claim shall be in the amount of the  
21 total allowed claim as that is set forth in the agreement. So  
22 it's 8.7, Judge, for your purposes.

23                  The last thing it provides for is that 8.7 billion  
24 number, in that event, will be ratcheted down to -- in the  
25 event that there are any payments from either the RFC estate or

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1       the GMAC-M estate on account of the 8.7 allowed claim against  
2       those estates. So it provides that there won't be duplication,  
3       if you will, with respect to that claim. Those are the  
4       principal terms.

5                   THE COURT: I think the last thing I read in -- it's  
6       in Cleary's -- Mr. Moloney's report is -- and he refers to it  
7       in paragraph 5 on page 4. "The trustee has learned of an  
8       undisclosed allocation of AFI's cash contribution as between  
9       Residential Capital and the other debtors as part of the  
10      concurrently executed plan support agreement with certain RMBS  
11      investors. (The debtors have discussed this as integral to the  
12      RMBS settlement and the case more generally.) This secret deal  
13      which should have been fully disclosed affects the RMBS  
14      settlement, including potential alter ego claims and the  
15      release of Residential Capital contained in the original RMBS  
16      settlement." I'll end my quote there. The paragraph goes on.

17                  Is there such an agreement?

18                  MR. PRINCI: There's an agreement, Your Honor, but  
19       there's no undisclosed agreement. We don't know where that  
20       came from, Judge. So the plan support agreement which was  
21       filed -- it's a public record; it's been a public record since,  
22       I believe, day one of this case -- you know, makes clear in it  
23       and references expressly that one of the conditions of the  
24       parties is that the recovery to the institutional investors has  
25       to be kept in accordance with a certain waterfall that is part

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1       and parcel of a presentation that was given to them by the  
2       debtors' financial advisor, FTI. That's no surprise to  
3       anybody. The committee's known that for a long -- everybody's  
4       known it. I don't know why the unsecured creditors' counsel is  
5       claiming that that's either undisclosed or that it's secret but  
6       it's neither.

7                   THE COURT: Are there any other substantive changes in  
8       the RMBS settlement?

9                   MR. PRINCI: No, Your Honor. So Judge --

10                  THE COURT: Let me ask you some more questions.

11                  MR. PRINCI: Please. Please.

12                  THE COURT: I understand your position that in light  
13       of the amendment you don't believe that the discovery regarding  
14       alter ego or the HoldCo election is relevant. I'll hear from  
15       the other side and give you a chance to respond to that. Let  
16       me ask you this; this seems to me a fundamental question. Why  
17       does the RMBS settlement have to be resolved before the sale of  
18       the loan platform and the legacy loan portfolio?

19                  MR. PRINCI: Okay. That's a critical question, Judge,  
20       and I have to make sure the Court understands this. Because  
21       there's been some obfuscation here that's really not helpful to  
22       the Court. In the scheduling order --

23                  THE COURT: You know, you would do yourself a real  
24       service if you didn't accuse other parties of obfuscation. If  
25       you would just directly respond to questions that I ask, okay?

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1     I'll tell you, you're not the only one who's done it in this  
2     case. I don't find it helpful. I don't appreciate when  
3     comments are made by filings about other -- that other counsel  
4     had made.

5                   MR. PRINCI: Understood, Your Honor.

6                   THE COURT: So restrict yourself to addressing  
7     specifically why this needs to be resolved before -- I mean,  
8     the auction is August -- October 23 and this hearing is  
9     supposed to be November 5th. So the auction is going forward  
10    without a resolution of the RMBS settlement and that's why I  
11    begin to ask myself, why does the settlement have to be  
12    resolved before the sale of the loan platform and the legacy  
13    loan portfolio --

14                  MR. PRINCI: Okay.

15                  THE COURT: -- are completed?

16                  MR. PRINCI: So, Judge, the auction is going forward  
17    with the comfort and understanding that whoever's the  
18    successful bidder, that the proceeds from that sale will not be  
19    subject to an enormous potential cure claim, to a cure claim  
20    which would effectively cannibalize the -- potentially, the  
21    entirety of the proceeds. And that's --

22                  THE COURT: So it's the cap on the cure claim?

23                  MR. PRINCI: That's the key, Judge. That is -- that  
24    is an absolutely critical concession that these estates have  
25    gotten from the institutional investors with the consent of the

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1 trustees. That cap, I believe, was estimated by the creditors'  
2 committee as being -- that the maximum, as I understood the  
3 creditors' committee's calculations on this when they proposed  
4 the specifics of it, I believe they informed me that they  
5 thought that that amount would be no more, ever, than 200  
6 million dollars. Around that number. And I'm not trying to  
7 pin it at that; it could have been a little more but around  
8 that number, okay?

9 As against -- as against, in the absence of a  
10 provision like that, the position of the trustees that you  
11 cannot, as we contend, sever the legacy claims from the claims  
12 that we're looking to have assumed and assigned. And if that  
13 issue is decided against us, I mean, these estates don't -- the  
14 trustees for the trusts will, effectively, either kill the sale  
15 or kill the net proceeds that go to the estates. So that's the  
16 critical element, Judge.

17 THE COURT: And the cap was agreed to in the  
18 scheduling -- the revised joint scheduling order?

19 MR. PRINCI: Yes, Your Honor.

20 THE COURT: And what is it that says that if the  
21 hearing doesn't happen by November 5th, their agreement to cap  
22 is gone?

23 MR. PRINCI: Oh, it doesn't say that in the order,  
24 Judge.

25 THE COURT: I didn't -- that's what I was looking for

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25

1 and I didn't see it.

2 MR. PRINCI: No. It doesn't say that in the order,  
3 Judge. It just -- and, you know, it's Your Honor's order. I  
4 will just say that, you know, having --

5 THE COURT: So what do you base -- have you received a  
6 threat from the RMBS trustees that they will terminate any  
7 agreement to cap the cure claim if the hearing doesn't go  
8 forward on November 5th?

9 MR. PRINCI: I'll let Ms. Patrick, when she addresses  
10 the Court, speak for herself but --

11 THE COURT: Well, you can answer for yourself.

12 MR. PRINCI: Yes, Your Honor, but I understand --

13 THE COURT: Have you received a threat from the RMBS  
14 trustees that unless the hearing goes forward on November 5th  
15 they will withdraw their agreement to the cap?

16 MR. PRINCI: Not from the trustees; from the  
17 institutional investors who have said they will direct the  
18 trustees to do that.

19 THE COURT: Okay. Go ahead.

20 MR. PRINCI: So that, Your Honor, is the --

21 THE COURT: How many -- you have -- the institutional  
22 investors, these are the ones who agreed to the plan support  
23 agreement?

24 MR. PRINCI: Yes, Your Honor.

25 THE COURT: And -- all or some? How many of the

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1 institutional investors have said that if the hearing doesn't  
2 go forward on November 5th, they will withdraw -- they will  
3 instruct the RMBS trustees not to go forward with the  
4 settlement?

5 MR. PRINCI: There are two agreements that we have but  
6 let me just say, the vast majority are contained in one  
7 agreement and the counsel for all of those institutional  
8 investors is the one who informed me of that.

9 THE COURT: Who's that?

10 MR. PRINCI: Ms. Patrick.

11 THE COURT: Go ahead.

12 MR. PRINCI: So Judge, I just -- I want to say this at  
13 the outset. If there's evidence that there's collusion --  
14 you've --

15 THE COURT: Evidence is usually derived from  
16 discovery.

17 MR. PRINCI: Understood. And that's why, Judge, when  
18 we produced the documents which are -- by the way, there's a  
19 continuing reference about the fact that we've only produced  
20 the e-mails regarding settlement discussions for the attorneys.  
21 Well, we wanted to get them the ninety-plus percent of them or  
22 the ninety-eight percent of them. That's where you start.  
23 There's going to be a de minimis amount, we understand, if any,  
24 of any further documentation coming from the individual. This  
25 would be because they -- any of their communications were

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1 either with us, so they're privileged -- but those people  
2 weren't the ones negotiating and having the communications with  
3 the other parties. But --

4 THE COURT: Have you produced e-mails from Mr.  
5 Cancelliere?

6 MR. PRINCI: I understand that we're collecting them.  
7 But so that Your Honor understands my point, take Mr.  
8 Cancelliere; it is our understanding that any communications  
9 that he had regarding this was with either the general counsel  
10 of ResCap or us. He wasn't the one who was interfacing --  
11 except, you know, in meetings. But he wasn't interfacing in  
12 written form with the other parties. But in any event, we're  
13 going to get people that and then I don't think --

14 THE COURT: Are the debtors' directors relying on  
15 advice of counsel supporting their approval of the RMBS  
16 settlement?

17 MR. PRINCI: Yes, Your Honor.

18 THE COURT: Doesn't that waive privilege?

19 MR. PRINCI: We don't believe so and, you know, I  
20 would say this. These are very important and not simple issues  
21 to address and if this is --

22 THE COURT: I'm not going to rule on the issue now.

23 MR. PRINCI: Okay.

24 THE COURT: But it did -- that was a point raised in  
25 one of the responses and it did seem to resonate with me that

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1       if -- you need to show that this settlement is fair, reasonable  
2       and in the best interests of the debtors' estates. And to the  
3       extent that it involves business judgment, there needs to be  
4       evidence to support that this was an appropriate exercise of  
5       business judgment.

6                   If the lawyers were the principal negotiators but the  
7       people making the decisions were the directors, that's why I  
8       think it's a fair question to ask whether they're relying on  
9       advice of counsel in support of their decision to approve the  
10      settlement. If that's so, then without deciding, you know,  
11      specific communications, you're going to have a real problem if  
12      you're going to assert privilege with respect to communications  
13      from counsel that form any part of the basis for directors  
14      approving the settlement.

15                  MR. PRINCI: Your Honor, I do not want to suggest to  
16       the Court that the debtors exclusively relied on the advice of  
17       counsel.

18                  THE COURT: Whether they exclusively or in part. Once  
19       you acknowledge that the directors relied, in whole or in part,  
20       on advice of counsel, how is it that you propose to shield that  
21       advice from discovery?

22                  MR. PRINCI: Well, maybe this is semantics and maybe  
23       this is substance. There are fundamental business issues that  
24       were the basis of the directors' conclusions to do the deals  
25       that are in front of the Court. I think there's, necessarily

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1       at times, counsel that provides information, but I don't think  
2       their decision, Judge, was based on anything other than  
3       business information and that will all come out.

4                   THE COURT: Well, look, if they weren't sitting in the  
5       negotiations, then they have to be relying on what the  
6       negotiators informed them, in writing or orally.

7                   MR. PRINCI: Well, management, Judge -- I mean,  
8       management does provide to the directors business information  
9       upon which the directors exercise their business judgment --

10                  THE COURT: Well, you already answered my question --

11                  MR. PRINCI: Okay.

12                  THE COURT: -- by saying acknowledging that they  
13       relied, in part, on advice of counsel and -- are you retracting  
14       that?

15                  MR. PRINCI: Judge, what I'm concerned about is what  
16       Your Honor's really looking for. I believe that the  
17       fundamental decision is a business decision based on business  
18       information. I can't exclude the possibility that there is  
19       advice you get from attorneys. I just don't -- that's my  
20       issue, Judge.

21                  THE COURT: Here's what's bothering me, Mr. Princi.  
22       The discovery cutoff is next week, okay? And none of these  
23       issues have been sorted out. You haven't completed document  
24       production; you haven't produced a privilege log. There may  
25       well be communications -- written communications that are

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1 properly protected by privilege. They don't have a basis --  
2 when I say "they", the people who are objecting don't have a  
3 basis to know that because you haven't completed the discovery,  
4 you haven't produced e-mails from management, you haven't  
5 identified on a privilege log which of the e-mails you contend  
6 is or isn't privileged. How is that all going to happen by  
7 September 24th?

8 MR. PRINCI: Okay. Judge, the one thing --

9 THE COURT: And --

10 MR. PRINCI: Yes?

11 THE COURT: -- they're taking depositions.

12 MR. PRINCI: Okay. So I want to -- for a moment  
13 because I want to answer Your Honor's present question. I want  
14 to separate depositions for a second because we do believe we  
15 have a sound proposal. Indeed, Your Honor, fundamentally, the  
16 committee has indicated that, conceptually, it agrees with  
17 this, and I'll explain that in a moment. We do believe we have  
18 a balanced proposal that will not prejudice any of the rights  
19 of the parties here, okay, and that will not put the debtors in  
20 a position where we have a sideshow to a sideshow becoming the  
21 main event, okay?

22 But let me just -- the narrow point, Judge, we are  
23 getting them the privilege logs but if the September 24th date  
24 is a problem, that can be moved back and the fact discovery  
25 date, Judge, can be made -- obviously, if has to be subject to

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1       Your Honor's approval, but the fact discovery date can be made  
2       coterminous with the expert discovery. It had always been our  
3       preference -- and we pushed this; this was something in the  
4       negotiations we pushed. We want it stagnated (sic) because  
5       it's just easier on our brain cells. But under the  
6       circumstances, Your Honor, we would be prepared to move back  
7       the September 24th date to the end date for expert discovery.

8                   The reason, Judge, on this point, that I don't think  
9       people are prejudiced is if people, Judge, believe when they  
10      review the information -- and they haven't done it yet so  
11      there's a fundamental pre-judgment that eclipses all this. And  
12      I'm not trying to cast dispersions. It just happens to be the  
13      facts. But if after they actually review the information, they  
14      review the privilege log, they have issues, I think we can all  
15      accept, given how proactive people have been, they'll come back  
16      to the Court. And Your Honor always, if you believe that this  
17      no longer works at any time, you always can move back the  
18      hearing date.

19                  THE COURT: Let me ask you three -- when will the  
20       debtors complete production of e-mails?

21                  MR. PRINCI: Your Honor, may I confer?

22                  THE COURT: Yes.

23                  MR. PRINCI: Thank you.

24                  (Pause)

25                  THE COURT: Ms. Lovett, if you want to address it

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1 directly --

2 MS. LOVETT: No, that's okay.

3 THE COURT: -- you can do that, okay?

4 MR. PRINCI: So Your Honor, information -- there'll be  
5 some information on this coming this week. The information  
6 that people are looking for, the documentation to the extent it  
7 exists with respect to --

8 THE COURT: The reason -- I really -- I ask this  
9 question -- yes, I -- to the extent it's a rolling production,  
10 that's fine. But I really --

11 MR. PRINCI: That's what I was trying to --

12 THE COURT: -- I'm very -- I want to be very specific  
13 and I want a specific answer, one that you have to live with.  
14 I want to know when -- the date when e-mail discovery -- e-mail  
15 production will be complete.

16 MR. PRINCI: Excuse me, Your Honor.

17 THE COURT: Go ahead.

18 MR. PRINCI: I need to confer with my client.

19 I've been informed September 28th.

20 THE COURT: Okay. The reason -- look, assuming that  
21 I'm prepared to move some of these dates, okay, this isn't  
22 going to be a death by a thousand slices, okay? When I ask you  
23 for dates, you better be able to live with them, okay? And  
24 that's why -- and I fully expect, assuming that the schedule is  
25 adjusted, that there'll be rolling production. But I want to

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1 know -- it's a hard stop date when -- look, there's always a  
2 few pieces of paper that turn up. I mean, that's the reality  
3 of litigation. I don't -- I'm not -- that's not what I'm  
4 talking about, okay? They find a reference in an e-mail to  
5 some document that hadn't turned up and then you go look for  
6 it; that's produced after.

7 So you believe that e-mail production will be -- now,  
8 we're talking about the debtors, but I'm going to have the same  
9 question for AFI. E-mail production by the debtors will be  
10 substantially complete -- very substantially -- will be  
11 complete by September 28th?

12 MR. PRINCI: I want to double-check, Judge.

13 THE COURT: Yeah.

14 MR. PRINCI: Excuse me.

15 THE COURT: The last thing you want to do is, when we  
16 get to September 28th, I find out that there's some server that  
17 hasn't even been touched yet.

18 MR. PRINCI: So you'll understand by my answer that  
19 people are clearly listening to you this morning, Judge.

20 October --

21 THE COURT: Well, maybe they were listening last week,  
22 too, but yet everybody seems to think something happened after  
23 September 11th.

24 MR. PRINCI: October 3, Your Honor.

25 THE COURT: All right. I'm crossing out September

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1       28th. October 3. When will all other requested document  
2       production be complete? Again -- I don't want to -- I'm not  
3       talking about a handful of loan files that you can't find and  
4       you've asked them to designate some others in their sample.  
5       I'm talking about in reading all of the status reports, it  
6       certainly appears to me that there is additional document  
7       production, besides e-mails, that have not been -- for example,  
8       there was a reference in one of the responses to an e-mail that  
9       referred to attached spreadsheets and those haven't been  
10      produced yet.

11                  MR. PRINCI: Okay.

12                  THE COURT: When -- what's the hard stop date for the  
13        debtors' completion of document production?

14                  MR. PRINCI: So, Judge, it's October 3. But just  
15        understand, what you referenced is how the problems come up.  
16        So if people are working with us -- and I'm not casting  
17        aspersions at all -- if we're working together towards a common  
18        goal, there will be things that will come up and it could be  
19        that they come up on October 1. So therein lies issue -- the  
20        loan files, for example --

21                  THE COURT: I'm used to dealing with those issues.

22                  MR. PRINCI: Okay.

23                  THE COURT: Okay? I experienced those issues as a  
24        practicing lawyer. I understand that there're always things  
25        that come up, okay? But I don't want to hear, if the schedule

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1 gets moved, on October 4th that I suddenly hear there are large  
2 swathes of documents that nobody has -- you know, haven't been  
3 produced, they're being reviewed, it'll be another week or ten  
4 days. That's not acceptable, okay?

5                   MR. PRINCI: Judge, I hear you. We believe it's  
6 October 3. Obviously --

7                   THE COURT: When's the privilege log?

8                   MR. PRINCI: -- we're not talking about alter ego  
9 documents.

10                  THE COURT: When's the privilege log? Same question.  
11 When will the debtor complete a privilege log?

12                  MR. PRINCI: Not next week, the following week, which  
13 is the week of whatever that is.

14                  THE COURT: What's the date? Let's -- I want real  
15 dates.

16                  MR. PRINCI: By the way, that's not -- we're going  
17 to -- we're not going -- we'll do this in rolling fashion, but  
18 you're looking for a dead -- a hard stop deadline, when will we  
19 be completed.

20                  THE COURT: Well, have you given them any privilege  
21 log so far?

22                  MR. PRINCI: I do not believe so, Your Honor.

23                  So on a rolling basis, Judge, to October 10. But  
24 again, on a rolling basis, Judge.

25                  THE COURT: Okay. I understand -- I'm switching

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1 issues now --

2 MR. PRINCI: Please.

3 THE COURT: -- that initially, at least, and it may  
4 still be a problem -- parties have raised an issue that  
5 documents that were produced initially weren't searchable. And  
6 you at least represented in your papers that that problem has  
7 been substantially cured? I mean, it doesn't -- look, to  
8 produce 500 -- you say you've produced 500 or the equivalent of  
9 500,000 pages. If you produce 500,000 pages in a form that  
10 can't be searched, that's like throwing the needle in the  
11 haystack and saying oh, we got a trial November 5th, good luck,  
12 I hope you get through them. Oh, discovery cutoff is next week  
13 so you can't take any more depositions.

14 MR. PRINCI: Agreed, of course. I'm going to ask Mr.  
15 Clark, my associate, who's in the trenches on this --

16 THE COURT: Okay.

17 MR. PRINCI: -- and who understands the technology  
18 light years better than I do, to address that, Your Honor.

19 MR. CLARK: Good afternoon, Your Honor. Dan Clark  
20 from Morrison & Foerster on behalf of the debtors. We produced  
21 e-mails on Friday in PDF format. Those can be downloaded,  
22 printed, and they would obviously need to be loaded in to  
23 anyone's own search platform. That's --

24 THE COURT: PDF documents, if they were -- were they  
25 converted from text files or where they scanned images?

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1 Scanned images aren't searchable, converted from text files,  
2 PDFs are searchable.

3 MR. CLARK: I believe they were converted from text  
4 files. And we provided searchable OCR, optical character  
5 recognition, documents on Monday at the request of one of the  
6 parties.

7 THE COURT: Okay. That's of all the documents you've  
8 produced now have been -- everything has been --

9 MR. CLARK: That is of all the e-mails.

10 THE COURT: -- produced in searchable form? Either  
11 OCR or PDFs that are searchable because they were converted  
12 from a text file and not an image.

13 MR. CLARK: I would say everything in the 9019 data  
14 room is either a native file that can be downloaded, an Excel  
15 file, or will be a searchable PDF. That does not apply to the  
16 loan files we produced to the UCC and to the trustees because  
17 those are handwriting documents that are not --

18 THE COURT: Right. I understand that.

19 MR. CLARK: -- usually produced in that form. Your  
20 Honor, any further questions?

21 THE COURT: Okay. Thank you very much, Mr. Clark.

22 MR. CLARK: Thank you, Dan. Your Honor, should I  
23 address further specific questions, obviously, if you have  
24 them?

25 THE COURT: I'm looking through my notes.

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1                   MR. PRINCI: All righty.

2                   THE COURT: I'll ask Mr. Schrock or one of his  
3                   colleagues this question, but let me ask it of you. What was  
4                   the role of AFI and Kirkland & Ellis in the RMBS settlement  
5                   negotiations?

6                   MR. PRINCI: We discussed with Kirkland & Ellis the  
7                   terms that were being negotiated of the RMBS settlement  
8                   agreement.

9                   THE COURT: Did either Kirkland --

10                  MR. PRINCI: In a real-time basis.

11                  THE COURT: Did either Kirkland or AFI have anyone  
12                  present during negotiations?

13                  MR. PRINCI: I'm sorry; say again, please?

14                  THE COURT: Did either Kirkland or AFI have anyone  
15                  present during negotiations?

16                  MR. PRINCI: I believe -- I believe --

17                  THE COURT: I don't know that -- whether these -- go  
18                  ahead.

19                  MR. PRINCI: I believe the answer to that, Judge, I --  
20                  from firsthand knowledge, I know the answer to that, like,  
21                  right before the petition was filed is yes, because there was  
22                  an associate at Kirkland & Ellis who we asked to be there just  
23                  so that we get the document done, so he came to our offices,  
24                  Morrison & Foerster's offices. And then prior to -- okay. And  
25                  then prior to that, Your Honor, I wasn't involved, and so I'd

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1 have to consult, but I'm being told, yes.

2 THE COURT: You identified Mr. Cancelliere, a mortgage  
3 risk officer, as being substantially involved in the settlement  
4 negotiations on behalf of the debtors. Was there any other  
5 person employed by any of the debtors who was substantially  
6 involved in the settlement negotiations of the RMBS settlement?

7 MR. PRINCI: Yes, Your Honor.

8 THE COURT: Who else?

9 MR. PRINCI: Ms. Hamzehpour.

10 THE COURT: Give me -- hang on; let me find -- I'm  
11 switching between the notes I prepared before and -- what is  
12 the name?

13 MR. PRINCI: It's Hamzehpour.

14 THE COURT: Could you spell it for me?

15 MR. PRINCI: I will in just one second, Judge. H-A-M-  
16 Z-E-H-P-O-U-R, H-A-M-Z, as in zebra, E-H-P, as in Peter, O-U-R.

17 THE COURT: And what is Ms. Hamzehpour's position with  
18 the debtors?

19 MR. PRINCI: She's general counsel.

20 THE COURT: And what was her role in the negotiations?

21 MR. PRINCI: She was one of our principal contacts,  
22 directives.

23 THE COURT: All right. Was there anyone else employed  
24 by any of the debtors that was substantially involved in the  
25 settlement negotiations?

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1 MR. PRINCI: Mr. Ruckdaschel.

2 THE COURT: D-A-S-H-E-L-L or --

3 MR. PRINCI: R-U-C-H (sic) --

4 THE COURT: Yes.

5 MR. PRINCI: -- D, as in David --

6 THE COURT: Yes.

7 MR. PRINCI: -- A-S-C-H-E-L.

8 THE COURT: And what is his position?

9 MR. PRINCI: I don't know -- he's a lawyer. I don't  
10 know the exact title, Judge, but he is an in-house expert on  
11 securitizations. I can find out his title in just one moment,  
12 if I confer with the client.

13 THE COURT: Go ahead.

14 MR. PRINCI: Excuse me, Your Honor. I've been  
15 informed his title is counsel.

16 THE COURT: Somebody just added something to that or  
17 not?

18 MR. PRINCI: Capital markets counsel.

19 THE COURT: Anyone else?

20 MR. PRINCI: I'm sure -- excuse me one second, Your  
21 Honor. You're talking now about people who work for ResCap as  
22 opposed to outside advisors, correct?

23 THE COURT: Correct.

24 MR. PRINCI: Okay.

25 THE COURT: Well, you say "outside advisors". If

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1       there are financial advisors who were substantially involved in  
2       the negotiations of the RMBS settlement on behalf of the  
3       debtors, I do want to know who they are, as well.

4                   MR. PRINCI: Okay. That would be Mr. Nolan and Mr.  
5       Renzi, R-E-N-Z, as in zebra, I, from FTI Consulting.

6                   THE COURT: Okay.

7                   MR. PRINCI: Mr. Puntus, P-U-N-T-U-S, and Mr. Chopra,  
8       C-H-O-P-R-A, from Centerview Partners.

9                   THE COURT: Anyone else?

10                  MR. PRINCI: Those -- and I'm sure there are other  
11       people, Judge, but those are the principal people.

12                  THE COURT: Okay. All right. Anything else you want  
13       to add now?

14                  MR. PRINCI: Yes, Your Honor. So, I just do want to  
15       speak to the Court about a proposal we have, and why we think  
16       it's important for some sort of balance to be entertained by  
17       the Court, and it is as follows.

18                  We believe that the thesis for the request for all  
19       this information is not well founded. The fact that we, prior  
20       to the petition date, took parties who were involved in the  
21       various agreements that we were executing and discussed these  
22       matters with them, is not per se evidence that there is  
23       collusion. You'd have sort of a double supposition: A, Ally  
24       owns you and therefore dominates you. You're exercising no  
25       independent judgment; your board is not exercising any

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1 independent judgment.

2 And B, off the heels of that, when you negotiated with  
3 people you've been litigating with for -- indirectly -- for  
4 quite some time, or that you're adverse to, you purposely  
5 inflated the amount of the allowed claim. Now, while we don't  
6 believe that's evidence, but that's supposition, we've given  
7 people a lot of documentation to see if, upon their review,  
8 they can identify anything beyond supposition, something to  
9 corroborate that this was collusive in its nature.

10 And what we're asking the Court is this: let these  
11 people, who obviously have -- I mean, some of these people have  
12 already made a decision not to accept the settlement agreement.  
13 For example, MBIA has decided -- MBIA has told the trustees --

14 THE COURT: They had a different explanation for their  
15 letter, but go ahead.

16 MR. PRINCI: Yes, I saw that explanation; I'm just  
17 having some difficulty with it, and I know you're -- you don't  
18 want to hear my views when it's -- with respect to inferences  
19 that can be drawn. I don't understand how they were addressing  
20 duplication of efforts. That's not what the letter says. And  
21 the other thing is they told the trustees in that letter do not  
22 accept the settlement. They just flatly say it. They don't  
23 qualify it; they say don't accept the settlement.

24 By the way, FGIC also sent a letter to the trustees  
25 and FGIC instructed the trustees don't accept the settlement.

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1 Now, I just don't know what all the rest of the information is  
2 going to do to change somebody's view --

3 THE COURT: But Mr. Princi --

4 MR. PRINCI: -- that they shouldn't accept the  
5 settlement. But --

6 THE COURT: -- whether this hearing goes forward on  
7 November 5th or on some other date, I have prejudged none of  
8 the issues. The only thing I'm determined to do is make sure  
9 that anyone opposing this settlement has a full and fair  
10 opportunity to present whatever facts that are relevant to the  
11 issues before the Court that requires in the first instance  
12 that they be given discovery of them.

13 I said early on, that I thought this was an aggressive  
14 schedule. You negotiated a schedule. The hearing going  
15 forward on the date that it's scheduled requires that there be  
16 substantial compliance. If dates are adjusted, either by  
17 agreement or by order of the Court, they'll be adjusted, but  
18 you don't get to decide -- with all due respect, or even less  
19 than that though, okay -- you're not the one who gets to decide  
20 what issues the objectors can present. They may go to present  
21 an argument, and I may rule that's not relevant. I may find  
22 some other basis; I may sustain your objection to the evidence.  
23 That's fine, but the objectors are going to have a full and  
24 fair opportunity to present their arguments. In an appropriate  
25 time; I'm going to set time limits for everybody on this

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1 hearing, so no one should be expecting that they're going to  
2 filibuster a hearing. It isn't going to happen, okay. When I  
3 set timed trials, I set the timed trials, and everybody lives  
4 with it. It's still premature for me to do that, but no one  
5 should think that they're simply going to filibuster, okay.

6 MR. PRINCI: So --

7 THE COURT: So you're not going to be the one who's  
8 going to decide, okay. You may disagree with the Iridium  
9 factors. They may not be able to offer, at a hearing,  
10 evidence. You described it as their collusion theory. I'm not  
11 sure it has to rise to the level of collusion, but if that's  
12 the theory of their defense, they'll have an opportunity to  
13 try. And if they have evidence to support it, if it's relevant  
14 to one of the factors the Court has taken into account, the  
15 Court will hear it and consider it, okay.

16 But when I said at the last hearing, everybody's  
17 picked up and quoted, that I said your November 5th date is  
18 hanging by a thread, it still is, okay, because you file a  
19 piece of paper, your status report, saying, oh, here's all the  
20 things we've done. But when I start reading your chart, you  
21 know, I had question marks in lots of places down, because you  
22 didn't represent that all of that discovery was done. You come  
23 back to the 1,500 sample loan files, but until I asked you  
24 questions, you didn't deal with the e-mails, okay. E-mails,  
25 for better or worse, have become a major topic of discovery and

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1 expense and burden on everybody.

2                   Let me hear from the other parties.

3                   MR. DONOVAN: Good morning, Your Honor. Daniel  
4 Donovan from Kirkland & Ellis for Ally Financial. Your Honor,  
5 you asked Mr. Princi five questions, and I want to answer those  
6 for you.

7                   First you asked, who from AFI, if anyone, should be  
8 deposed? It would be Mr. Timothy Devine, chief counsel of  
9 litigation for Ally; that's one.

10                  Two, you asked Mr. Princi when he would, and I assume  
11 you'd asked me, when would Ally complete their e-mail  
12 production. On or before September 24th of 2012.

13                  Third, you asked when a privilege log would be  
14 produced. We're going to produce our initial privilege log  
15 September 28th, and plan to supplement that October 5th, and be  
16 done on that date, October 5th, 2012.

17                  Fourth, you asked Mr. Princi, whether ResCap's  
18 production is searchable. Ally's is searchable. We produced  
19 as TIFFs with load files; we've heard nothing from the  
20 committee. They've been unable to search it. And I'm going to  
21 come back -- I hope they have searched the settlement  
22 negotiation documents we produced in July of 2012, but I'll  
23 come back to that.

24                  Fifth, you asked what was Ally's role related to the  
25 RMBS trust settlement agreement. And I think Mr. Princi had it

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1 right. We were kept up to date, primarily Mr. Devine, also, my  
2 colleague Noah Ornstein, from Kirkland & Ellis. We were kept  
3 up to date; we were interested, and we were kept up to date,  
4 primarily by Morrison & Foerster and others.

5                   So I believe those were five questions you asked, but  
6 I wanted to give you Ally's response at the outset.

7                   THE COURT: You gave me the date by which e-mail  
8 production will be completed. What about any other document  
9 production other than e-mails, electronic or paper?

10                  MR. DONOVAN: And I'm putting those together, Your  
11 Honor. So I believe both --

12                  THE COURT: Okay. All production.

13                  MR. DONOVAN: All of our discovery, and just for the  
14 record, we have searched and are searching thirteen custodians,  
15 four of which are from Kirkland. The four Kirkland custodians  
16 were searched and produced back in July 2012, July 26th to be  
17 precise. And those documents were e-mails of which MOFO was  
18 on, Ms. Patrick was on, and others if we were CCed, if any of  
19 those four Kirkland custodians were CCed.

20                  So when the committee's report last night said  
21 settlement negotiations that we were at least copied on -- I  
22 know they happened without us -- those have been produced.  
23 There's going to be some more, but they've been produced. And  
24 that's because, Your Honor, since June, the committee served  
25 2004 requests, as you know, and at least three of them, if not

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1 more, committee request 18 to 20, asked for the same  
2 information, not surprisingly. So --

3                   THE COURT: And you say that was substantially done  
4 when?

5                   MR. DONOVAN: From the Kirkland --

6                   THE COURT: Yes.

7                   MR. DONOVAN: July 26th is when we produced it. And  
8 later this week -- I hope to be done by Friday, but I gave  
9 myself till Monday under your question -- is we're going to get  
10 the rest of the business folks.

11                  THE COURT: Okay.

12                  MR. DONOVAN: And that's where we come out, Your  
13 Honor. We have no objection to the committee asking for  
14 discovery from Ally. We've produced it; we intend to. We  
15 don't think we particularly should be the focus, but that's  
16 fine. And that's why in our report last night, when we've been  
17 working with the committee, we asked, knowing we're going to  
18 come before Your Honor, for confirmation that there are no  
19 issues. And we got confirmation. And then in the status  
20 report, there were the two issues raised last night that I  
21 think I've given you the dates now.

22                  THE COURT: Okay.

23                  MR. DONOVAN: Your Honor, I don't know if you want to  
24 go through -- we can -- I know some other parties -- FGIC had  
25 some objections to our discovery. I'm happy to save that,

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1 since you seem to be focused --

2 THE COURT: No, go ahead.

3 MR. DONOVAN: Okay. FGIC, Your Honor, as you know, if  
4 the co-chair of the creditors' committee. They're also a  
5 plaintiff against us in ten cases that are stayed by agreement  
6 extending the stay, okay. So we obviously have some different  
7 issues than with the committee. We told FGIC, just recently,  
8 we wanted to meet and confer; it didn't happen, but I believe  
9 it was passing between status reports and letters yesterday,  
10 that we would give them access to the material we're producing  
11 to the committee that's confidential.

12 Your Honor, under the protective order there's also a  
13 category called "professional eyes only", and that was  
14 negotiated obviously for a reason. FGIC is an adversary. We  
15 have serious concerns about giving them that, but we told them  
16 if we can get to an agreed order -- I think it would basically  
17 need to be a lawyer who's not going to be involved in any of  
18 the other litigation -- we're willing to give them that  
19 information. But that's a serious issue to us, Judge, because  
20 we are adversaries, and we don't believe we should have to  
21 produce such information, especially when we view some of their  
22 requests to basically get around the stay.

23 THE COURT: So Jones Day in paragraph 12 of their  
24 status report says "FGIC continues to be stonewalled in its  
25 efforts to receive discovery from another key party to the

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1     settlement process, namely the debtors' parent, Ally Financial.  
2     AFI, remarkably, claims that it is not a relevant party to the  
3     settlement for discovery purposes," et cetera. So your  
4     response is you've -- you don't know what they're talking  
5     about.

6                   MR. DONOVAN: Right. What we told them was, look, we  
7     think it's duplicative, Judge, but understanding we're coming  
8     before Your Honor, we said, fine, we're not going to fight  
9     this. We will give you what we're giving the committee, and  
10    this was either contemporaneous, or after they filed the status  
11    report, we had letters going -- and e-mails last night. We're  
12    going to give them that information.

13                  THE COURT: Hearing dates tend to focus the mind; it  
14    does, you know.

15                  MR. DONOVAN: It does, doesn't it? Yes. A hanging in  
16    the square. But what did happen, though, Judge, and this is --

17                  THE COURT: So wait, let me ask you this.

18                  MR. DONOVAN: Yes.

19                  THE COURT: Have you reached an agreement with Jones  
20    Day as to what you will give and under what conditions you will  
21    give it?

22                  MR. DONOVAN: We have, although the second part -- the  
23    first part is confidential. We're giving the committee --  
24    we're giving that, so there's no need. The second part, we  
25    agree we're going to talk after the hearing. We tried to match

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1 up before; we couldn't reach.

2                   THE COURT: Okay.

3                   MR. DONOVAN: And that is this category. And I don't  
4 think it's much for RMBS, but there is some, the "professional  
5 eyes only" material, and frankly, as my client has told me,  
6 they don't want material that shouldn't be produced or is  
7 somehow not producible on the FGIC cases that are being  
8 requested to be produced, but if we can reach an agreement  
9 where it's a separate lawyer looking at it, we're fine with  
10 that. So I think that will resolve most, if not all; they'll  
11 tell you.

12                  THE COURT: What judge is the FGIC cases pending  
13 before?

14                  MR. DONOVAN: Don't know, Your Honor. I'd have to  
15 check.

16                  THE COURT: All right. Thank you.

17                  MR. DONOVAN: So Your Honor, I believe that brings you  
18 up to date. So bottom line, Ally has no objection to the  
19 discovery from the committee that we believe remains; there may  
20 be some leftovers. And we will cooperate and proceed.

21                  THE COURT: Okay. Thank you. Ms. Patrick?

22                  MS. PATRICK: Yes, Your Honor. May it please the  
23 Court, Kathy Patrick for the steering committee investors who  
24 have -- are parties to the settlement agreement. Let me answer  
25 your questions that you put to Mr. Princi. Has there been a

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1 threat? No, there has not been a threat, but the --

2 THE COURT: A promise, or what? I mean, Mr. --

3 MS. PATRICK: There has been a key observation that  
4 there were substantive concessions made by our trustees in  
5 consideration of a good faith effort on the part of everyone to  
6 meet the schedule for the hearing. We want this motion heard.  
7 As the Court observed at the very first hearing I attended, if  
8 these repurchase claims languish, the case can go into a  
9 meltdown. It's in nobody's interest for that to happen.

10 And having negotiated that settlement -- that  
11 scheduling order -- it's important that the Court know that  
12 when that order was negotiated, there was no mention of loan  
13 files, there was no mention of settlement communications or  
14 depositions of lawyers or anything else. And when that order  
15 was negotiated, the very day it was negotiated, the creditors'  
16 committee stood up in this courtroom and tried to walk it back  
17 and suggest that they were not going to meet it.

18 And so part of what our clients have to evaluate is  
19 whether the creditors' committee's continued effort to run this  
20 case the way they prefer by waiting for the examiner, by having  
21 all of this in a plan -- I know that --

22 THE COURT: I think I made it clear --

23 MS. PATRICK: I know that.

24 THE COURT: -- last week on the issue of plan  
25 negotiations that we're not waiting for the examiner report.

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1                   MS. PATRICK: Yes, Your Honor, you did.

2                   THE COURT: On that or on this, okay. So to the  
3 extent that -- and I didn't really read that as -- that seems  
4 to have gotten dropped from what they're pressing.

5                   MS. PATRICK: It --

6                   THE COURT: But Ms. Patrick, there's an enormous  
7 amount of discovery and expert work and preparation that goes  
8 into having a hearing on the RMBS settlement. I don't  
9 underestimate the importance of the settlement to this case.

10                  MS. PATRICK: Yes, sir.

11                  THE COURT: Okay. My concern before last week,  
12 expressed last week, the reason I scheduled this hearing is,  
13 I'm not sure it's realistic to really think that this case is  
14 going to be ready for hearing on November 5th. I'm not  
15 prepared to say today that it's not, but --

16                  MS. PATRICK: Yes, Your Honor. I --

17                  THE COURT: -- from the standpoint of your clients  
18 who've entered into an agreement, and I understand the  
19 importance to them, having committed to this, that it go  
20 forward expeditiously and not languish --

21                  MS. PATRICK: Um-hum.

22                  THE COURT: -- if they want the agreement approved,  
23 it's in their interest to assure that there aren't these  
24 unnecessary diversions from dealing with it on the merits.

25                  MS. PATRICK: Indeed, Your Honor. And to be clear, it

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1 isn't as though the settlement agreement itself was entered in  
2 July. The settlement was announced in May on the first day  
3 hearing. The plan support agreement specifically referenced  
4 the allocation of -- pursuant to the waterfall, there is a  
5 precise provision in it that refers to two presentations of the  
6 waterfall concerning the allocation that was not a surprise to  
7 anyone. Creditors' committee was appointed soon after that.  
8 The scheduling order was entered in July, at the end of July.  
9 And we got our first request for settlement communications from  
10 the committee on August 27th.

11 THE COURT: Well, but here we are; we're in the middle  
12 of September.

13 MS. PATRICK: Here we are, exactly. But my point,  
14 Your Honor, is, having gotten that request on August 27th, we  
15 have not yet had an opportunity to talk to you about our  
16 position on settlement communications, and I want to be clear  
17 about it.

18 The debtors have agreed to produce the settlement  
19 communications. Ally produced all of the settlement  
20 communications on July 26th. The Court, in the hearing on the  
21 exclusivity point last week, made the point that settlement  
22 negotiations are not ordinarily discoverable in the ordinary  
23 course. Why is that? Because the evidence of whether  
24 negotiations are at arm's length is evident from the agreement  
25 itself. It is. And for our clients, this is a significant

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1 issue.

2 We, unlike everybody else here, are trying to remedy  
3 this broadly across the market. We have two settlements  
4 pending: one here, one in Bank of America. We are negotiating  
5 with other banks. This morning we sent notices of default to  
6 Wells Fargo and Morgan Stanley. It is not insignificant to our  
7 ability to try to get relief for bondholders that have suffered  
8 billions of dollars of losses to be able to conduct settlement  
9 negotiations with the presumption of confidentiality that  
10 everyone expects. And so we have been clear with the  
11 creditors' committee and with everybody else that has requested  
12 them that we will not produce our settlement negotiations  
13 unless ordered by the Court.

14 We had conversations about that with the creditors'  
15 committee in August. We met with them on September 4th and  
16 told them that was their position. As recently as last week,  
17 we sent another letter to them asking them to tell us if they  
18 intended to raise this issue so that we could brief it to the  
19 Court. They acknowledged that we were entitled to notice so  
20 that we could brief the issue for ourselves, and we learned  
21 that they intended to raise it in an e-mail yesterday.

22 Now, that may be how they believe this is fair to  
23 raise this issue, but this is not insignificant to our clients.  
24 Uniquely among everybody here, we are prejudiced if our  
25 settlement communications are disclosed. Uniquely among

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1 everybody here, we have other interests at stake, and uniquely,  
2 those interests are compelling, given that both Ally and the  
3 debtors have agreed to produce these settlement negotiations,  
4 and --

5                   THE COURT: Isn't the cat out of the bag, once --

6                   MS. PATRICK: Well, the cat is out of the bag, but the  
7 issue for them is, well, they might have overlooked something  
8 in their production, but we are in a circumstance where, for  
9 the sake of what we are trying to accomplish elsewhere, we  
10 think the holding of *In re Lee Way* (ph.) and the many other  
11 cases requiring that collusion be established by extrinsic  
12 evidence before settlement negotiations are made discoverable,  
13 is apposite here. It's entirely relevant. They now have  
14 documents, that in our view, they were not entitled to receive,  
15 settlement negotiations, and they've had them for over a month  
16 from Ally. They're in the process of getting them from the  
17 debtor, and yet on the basis of our refusal to produce the same  
18 universe of documents, they now want to kick the hearing date  
19 that we negotiated.

20                  To be clear, our privilege log will be done on  
21 Thursday for all of the pre-settlement communications. All of  
22 our other production that was not settlement negotiations was  
23 completed on July 31st. But there is, Your Honor, a  
24 significant group of people who for their own reasons,  
25 including the creditors' committee, would prefer this hearing

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1       to happen on the 12th of Never, because they have other  
2       interests. Everybody has their interests. I certainly have  
3       mine; I acknowledge that. But let's take MBIA as an example.

4                   MBIA issued a subpoena, including a request for  
5       settlement negotiations, on June 15th. The Court will remember  
6       that hearing; we were here arguing. On July 6th, in  
7       correspondence with us, they agreed to defer that issue. On  
8       July 23rd, they sent a letter to the trustees instructing them,  
9       not only not to accept the settlement, but not to consider it.  
10      Now, we didn't find out about that letter until recently. But  
11     on September 13th, we sent a letter to MBIA saying, haven't  
12     heard from you; assume that you have no other issues. And they  
13     filed a response yesterday raising these issues.

14                  THE COURT: Let me ask you --

15                  MS. PATRICK: It is not question of not being  
16       proactive, Your Honor. We have produced -- in response to  
17       every request we have gotten, we have produced within the ten-  
18       day period.

19                  THE COURT: Wait, let me ask you something.

20                  MS. PATRICK: Um-hum.

21                  THE COURT: Can you identify the person or persons on  
22       behalf of the investors who was substantially involved in the  
23       negotiations? Was there anyone other than their outside  
24       counsel?

25                  MS. PATRICK: You're talking to her.

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1                   THE COURT: Okay.

2                   MS. PATRICK: And so for our purposes, the question of  
3                   deposing lawyers is particularly acute. Now, we have addressed  
4                   this issue before. We've addressed the question of settlement  
5                   communications before, and it initially came up while the Bank  
6                   of America settlement was pending in federal court and then  
7                   made its way back to state court. And in that context, we  
8                   cited a number of cases that are familiar to the Court, as  
9                   you've said, the Second Circuit law, which requires parties  
10                  which want to depose lawyers to identify, not only that the  
11                  evidence is highly material, but that there is no other source  
12                  from which it can be obtained.

13                  THE COURT: What are the other sources -- if the  
14                  lawyers were the negotiators, what are the other sources from  
15                  which the information can be obtained?

16                  MS. PATRICK: Well, they have all of the written  
17                  documents and e-mails that went back and forth; they have the  
18                  drafts of the agreement; they have the agreements themselves;  
19                  they have data on which the settlement was premised, the GSE  
20                  repurchased data that the debtors produced. They have an  
21                  abundance of evidence from which to assess the reasonableness  
22                  of the debtors' conclusion that 8.7 billion dollars was a  
23                  reasonable settlement to enter into with trusts that have  
24                  already suffered 47 billion dollars of losses. So there is an  
25                  abundance of evidence.

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1                   Importantly, Your Honor, there's a clear distinction  
2                   in the case law. Every settlement does not make the  
3                   negotiation of that settlement relevant. The back and forth of  
4                   who said what to whom, is not presumptively relevant. Indeed,  
5                   it's only rarely relevant. It's only relevant if there is  
6                   extrinsic evidence of collusion. And notably -- notably, there  
7                   is no suggestion by anyone that our clients or the separately  
8                   represented Tal-Franklin Group, which has a different  
9                   agreement, right -- their terms of their agreement preserve  
10                  certain servicing claims that our clients did not -- engaged in  
11                  any collusion with the debtors or Ally Financial with regard to  
12                  this settlement. There is no evidence of that. There is no  
13                  suggestion of it at all.

14                  And as a consequence of that, from our perspective,  
15                  the prospect of deposing litigation counsel to discover  
16                  settlement negotiations -- recall, Your Honor, this is not the  
17                  only place where we face MBIA and FGIC. It's not the only  
18                  place where we face other noteholders who have interests that  
19                  are --

20                  THE COURT: See, the issues you raise seem to me to be  
21                  quite different from depositions of employees of the debtors --

22                  MS. PATRICK: Yes.

23                  THE COURT: -- who happen to be lawyers, whether they  
24                  were acting -- put aside there may be a relevant issue as to  
25                  whether they were acting as lawyers or acting as

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1 businesspeople --

2 MS. PATRICK: Um-hum.

3 THE COURT: -- where the debtor -- where the debtors'  
4 board, in making a decision to enter into a settlement has  
5 relied, in part, on advice of counsel.

6 MS. PATRICK: Um-hum.

7 THE COURT: That's a different issue than you raise as  
8 litigation counsel for the investors who negotiated the  
9 settlement.

10 MS. PATRICK: Yes, Your Honor.

11 THE COURT: So the fact that some lawyers may get  
12 deposed doesn't mean all lawyers get deposed.

13 MS. PATRICK: Although -- exactly, Your Honor. I  
14 agree with that. But even in the context of typical derivative  
15 litigation, special litigation committee, litigation, all of  
16 that, it's not customary to depose lawyers.

17 THE COURT: Look, I am -- I said this at the start.  
18 I'm not a fan of having lawyers --

19 MS. PATRICK: Um-hum.

20 THE COURT: -- deposed.

21 MS. PATRICK: Yes.

22 THE COURT: There are cases and there are issues where  
23 that necessarily is appropriate. When I'm told -- and that's  
24 been modified slightly -- that the only people who were  
25 involved in these negotiations were the lawyers, and you can't

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1       depose any of them, that doesn't ring quite true to me. Okay?

2                   MS. PATRICK: Sure. I understand that, Your Honor.

3       And I completely get where you're coming from in that regard.

4       But for --

5                   THE COURT: Because even the cases that have been  
6       cited; is there another alternative? Yes. And I would look to  
7       is there some alternative other than deposing the lawyers if  
8       there's -- where the information can be obtained.

9                   MS. PATRICK: Um-hum. Yes. That's right.

10                  THE COURT: Okay. I understand your argument, Ms.  
11       Patrick.

12                  MS. PATRICK: And then the --

13                  THE COURT: Trust me, if -- you'll have -- if  
14       necessary, I will give you a chance to brief the issue.

15                  MS. PATRICK: Thank you, Your Honor.

16                  THE COURT: I'm not deciding it on the basis of status  
17       reports. Okay?

18                  MS. PATRICK: Thank you, Your Honor. And, Your Honor,  
19       we are prepared to move forward. We have moved forward. We've  
20       met our deadlines. People -- this is, as you said, this  
21       happens often in cases where production gets a little off  
22       track. But ours is on track.

23                  THE COURT: Well, yours is on track, but the cutoff of  
24       fact discovery is September 24th. And what I'm being told --  
25       that was a cutoff of all fact discovery. And now I'm being

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1 told that the debtor will complete its production by October  
2 3rd and have a privilege log by October 10th. You can't have a  
3 cutoff of fact discovery when not all stuff has been produced.  
4 Okay? So the situation is going to require an adjustment to  
5 the schedule; which parts of it remain to be seen.

6                   MS. PATRICK: Yes, Your Honor. And the only other  
7 points that I will make with re --

8                   THE COURT: Mr. Princi seemed to be saying that you  
9 threatened to pull the plug on the proposed settlement if the  
10 hearing doesn't go forward on November 5th. And your answer to  
11 that was, no threat.

12                  MS. PATRICK: No, Your Honor. My answer to that was,  
13 actually, the concession that our trustees made with regard to  
14 capping their cure claims and limiting their servicing  
15 objections was premised on the notion that the creditors'  
16 committee and others would work in good faith to try to achieve  
17 that schedule, would work hard, would put us in a position  
18 where we would have a hearing. And what has happened, Your  
19 Honor, from the moment that hearing was announced, is that the  
20 creditors' committee has been clear that it does not prefer  
21 this settlement to be resolved outside of a plan.

22                  THE COURT: Well, I've already told you, that part is  
23 a nonstarter, okay?

24                  MS. PATRICK: But the point I was trying to make, Your  
25 Honor, is that in that context, if you look at the timing and

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1 scope of when they have served discovery, they have not used  
2 their time efficiently. For example, the settlement was  
3 announced in May. The scheduling order was entered at the end  
4 of July. We had informal conversations with them about the  
5 production of documents. They did not subpoena settlement  
6 communications until August 27th. We responded to them, and  
7 they notified us for the first time yesterday that they  
8 intended to raise it.

9                   And so all I'm saying is, we are all trying to work  
10 very hard to try to get this hearing held on the calendar so  
11 that it can be resolved. But our position is very clear --

12                  THE COURT: Let me make one or -- I'm going to stop  
13 you there.

14                  MS. PATRICK: Um-hum.

15                  THE COURT: Earlier in this case --

16                  MS. PATRICK: Um-hum.

17                  THE COURT: -- there was another issue about  
18 scheduling of hearings, and I basically told counsel for one of  
19 the other parties-in-interest that I was not going to allow  
20 their threats to hold this case hostage; that the schedule  
21 would be set appropriately. The Court is certainly prepared to  
22 move forward expeditiously.

23                  But you haven't -- and I want to make clear -- I  
24 haven't heard a statement -- call it a threat or call it  
25 something else --

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1                   MS. PATRICK: No.

2                   THE COURT: -- that if the November 5 hearing gets  
3 moved because there just is not sufficient time, I don't have a  
4 reason to question the good faith of all the parties who are  
5 seeking discovery. Okay?

6                   There's a lot that has to be done to prepare for this  
7 hearing. There are experts who have to have access to all the  
8 documents before they can complete reports. There's a lot of  
9 things -- there are a lot of moving targets. Okay?

10                  The one thing that I recoil at --

11                  MS. PATRICK: Um-hum.

12                  THE COURT: -- is anyone who takes the position that  
13 well, if this date doesn't hold or that date doesn't hold, I  
14 don't care what the problems are, we're going to take our cards  
15 and go home. Well, we'll see what happens if that happens,  
16 okay? We'll see what --

17                  MS. PATRICK: Your Honor --

18                  THE COURT: -- happens.

19                  MS. PATRICK: -- we have not said that.

20                  THE COURT: Okay. I --

21                  MS. PATRICK: What we have said is if the creditors --  
22 here's all we're saying; because it's not a one-sided  
23 conversation between us and the creditors' committee. If the  
24 creditors' committee, as they suggest in their pleading,  
25 believes they can take the benefit of the agreement our

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1 trustees made without working hard to adhere to the schedule,  
2 that they can, having agreed to that benefit, stick their feet  
3 in concrete and say no, no, no, we just don't want to, that's  
4 not fair.

5                   THE COURT: Well, that's not what's going to happen.  
6 But let me -- I want to make -- I want to get your position on  
7 a question that I asked Mr. Princi.

8                   MS. PATRICK: You bet.

9                   THE COURT: Because this was what seems to me to be  
10 the key question; and I think I know the answer to this, but if  
11 you have a different view, go ahead and tell me. The question  
12 I asked him was why does the RMBS settlement have to be  
13 resolved before the sale of the loan platform and the legacy  
14 loan portfolio? And I think the answer is, it doesn't.

15                  MS. PATRICK: Oh, Your Honor, we believe absolutely  
16 that it does.

17                  THE COURT: How is that going to happen? The auction  
18 is scheduled for October 23rd.

19                  MS. PATRICK: The auction, right now, is going forward  
20 with the prospect that there is a settlement agreement in place  
21 that is subject to approval, that allows for the settlement to  
22 be made free and clear of the repurchase and servicing claims.  
23 The trustees are currently operating under an agreement that  
24 caps the cure claim at 600 million dollars. So we're in a  
25 universe where prospective buyers, just as they were at the

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1 beginning of the case, are operating under the assumption that  
2 the RMBS claims are in a box and will stay there and will not  
3 present significant risk to them going forward.

4                   It is our position -- it has been our position that in  
5 the absence of these agreements, it is not possible to sever  
6 the servicing going forward from the obligation of the seller,  
7 because they are one and the same entity. In each of these  
8 instances, they are one and the same. And so that's why it was  
9 very important to get these lined up in a row so that the  
10 settlement could proceed free and clear.

11                  Our clients have an interest in that servicing sale,  
12 probably an interest overwhelmingly different than everyone  
13 else's, because we actually care about mortgage servicing over  
14 the long term. We also care about proceeds, because proceeds  
15 are what are going to compensate us.

16                  THE COURT: And what is -- if the RMBS settlement is  
17 resolved in November versus resolved in January, what  
18 consequences flow from that?

19                  MS. PATRICK: Your Honor, we believe that if it's a  
20 circumstance where all of the schedule is going to move back,  
21 the issue that we understand will be at play at that point is  
22 this: our clients have cure claims -- our clients -- the  
23 trusts have cure claims that our clients have concurred with  
24 the trustees, can be cured. That was a substantive concession  
25 that the estates wanted, needed, and that benefits other

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1 creditors.

2           There was a quid pro quo for that. It's not a threat,  
3 but we're going to have to think about what rights we have to  
4 preserve for the trusts. Because if we're not going to get a  
5 circumstance where -- if we're going to be operating in a  
6 circumstance where the RMBS trusts' claims are treated as  
7 inchoate and subject to dispute, where other constituencies'  
8 claims are treated as concrete, we get less consideration. And  
9 I'll give you a perfect example of how that happens.

10           It is our understanding that although our trustees  
11 have not made a decision at all about this settlement, they are  
12 routinely excluded from creditors' committee deliberations  
13 about it, whereas, MBIA, which has already directed the  
14 trustees not to accept it, participates in those discussions.  
15 And so I understand that bankruptcy is a collision of  
16 interests, it's a fascinating collision of interests, but our  
17 clients cannot unilaterally disarm themselves, leaving  
18 themselves in a circumstance where cure claims that might have  
19 substantial value for the trusts, if the settlement doesn't get  
20 resolved, are compromised, but they don't get a hearing on the  
21 rest. That's not a threat. That's just a practical  
22 recognition of the reality of the circumstance.

23           THE COURT: Okay. Thank you.

24           MS. PATRICK: Thank you, Your Honor.

25           THE COURT: Mr. Eckstein?

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1                   MR. ECKSTEIN: Happy New Year, Judge.

2                   THE COURT: Thank you, you too.

3                   MR. ECKSTEIN: I'm trying to sort out where I think it  
4 makes the most sense to go. I think I'd like to first deal  
5 with Ms. Patrick's comments, because I view those, in some  
6 respects, as threshold issues.

7                   I am -- the committee respects the goal that Ms.  
8 Patrick has in moving this forward swiftly; and the committee  
9 understands the Court's intention to move this hearing forward  
10 as quickly as possible. And this is not an attempt to delay or  
11 derail the consideration of the settlement. That said --

12                  THE COURT: Well, that's a theme that's been echoed  
13 for quite some time, including in some of the status reports.

14                  MR. ECKSTEIN: Your Honor, that doesn't change our  
15 view that this is such a pervasive settlement, and it has such  
16 overwhelming implications for the outcome of the case and a  
17 plan, that it would be preferable if this was dealt with in a  
18 plan.

19                  I understand Your Honor's observations that that's not  
20 going to be the way this is going to be considered, and so be  
21 it. But it's correct that our view is that this should ideally  
22 be folded into a plan. And in fact, if you go back to the way  
23 this was structured by the debtor initially, they contemplated  
24 that this would be done in conjunction with a plan. And I  
25 think there's a lot of merit to that. But if that's not the

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1 way the case is going to proceed now, we understand that.

2                   The question -- the threshold question, however, that  
3 I think Your Honor raised and discussed with Ms. Patrick is, is  
4 there an absolute requirement that this proceed on November  
5 5th. I believe that there's no question on all sides of this  
6 case, parties have been working very diligently to deal with  
7 these issues.

8                   As Mr. Princi knows, as Ms. Levitt knows, and as Ms.  
9 Patrick knows, we have been talking about, for example,  
10 discovery going back prior to the entry of the scheduling  
11 order. And each of those individuals have personally requested  
12 me and my partners that we defer the filing of formal discovery  
13 with respect to the settlement process until we could:  
14 A, consider the substance of the settlement; B, deal with it  
15 informally. And we accommodated those requests.

16                  And the reason that the discovery was served at the  
17 end of August was in response to requests by the debtors'  
18 counsel and by Ms. Patrick that we not proceed precipitously  
19 with those discovery requests. I was personally implored on  
20 multiple occasions to do that. I discussed this issue with the  
21 parties going back in July, whether or not this was or was not  
22 proper discovery. So to now suggest that we delayed --

23                  THE COURT: Let me just stop you for a second. Okay?  
24 Let's assume that I conclude it's proper discovery. Okay? But  
25 so where does that take us now?

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1                   MR. ECKSTEIN: I'm getting to that, Your Honor. But I  
2 was just responding to the fact that somehow we sat on our  
3 hands. We didn't sit on our hands. This issue was --

4                   THE COURT: Do I take it from the fact that you're  
5 pressing for discovery about the negotiations that you've  
6 concluded that the amount of the proposed settlement is not  
7 fair, reasonable, and in the best interests of the debtors'  
8 estate?

9                   MR. ECKSTEIN: No. At this point, we have not made  
10 that conclusion, Your Honor. We are pressing with the  
11 discovery at this point in time, because we concluded that time  
12 was running out. The September 24th cutoff for discovery is in  
13 place, and we concluded, at the end of October (sic) that we  
14 could not wait any longer, and we had to serve the discovery  
15 requests so that there was ample --

16                  THE COURT: You concluded at the end of August that --

17                  MR. ECKSTEIN: End of August that we needed to serve  
18 formal discovery requests so that we can conclude this by the  
19 end of September. I thought that was the responsible thing to  
20 do.

21                  THE COURT: Have you taken any depositions at all?

22                  MR. ECKSTEIN: No, we have not. We have not -- Your  
23 Honor let's -- to cut through a lot of discussions today. The  
24 reality is, we have minimal -- right now, notwithstanding all  
25 the documents, all the comments, we have minimal substantive

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1 production, as of today, with respect to the settlement  
2 process.

3                   I heard we're going to be getting some. We're hearing  
4 names for the first time. The debtor has conceded, they  
5 haven't even searched -- they haven't even searched the  
6 businesspeople who participated in the negotiations. Even  
7 Ally, they suggest that they may have produced some documents  
8 in July from Kirkland, but they haven't produced any  
9 businesspeople e-mails to date.

10                  THE COURT: Well, let me ask you this. The names that  
11 were specifically identified as having been substantially  
12 involved in the negotiations for employees of the debtors were  
13 Daschel (sic), Hamzehpour, Cancelliere, and then from FTI,  
14 Nolan and Renzi, and from Centerview, Puntus and -- I can't  
15 read my own --

16                  MR. ECKSTEIN: Chopra.

17                  THE COURT: -- Chopra. Those names haven't been  
18 identified?

19                  MR. ECKSTEIN: We have not received e-mails from any  
20 of those individuals to date. And I don't believe --

21                  THE COURT: Any of them?

22                  MR. ECKSTEIN: Any of them. And, Your Honor,  
23 respectfully, for the debtor to stand and suggest that Mr.  
24 Cancelliere is the principal negotiator -- to the extent -- we  
25 just searched what we've received to date. We have found two

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1 e-mails that has Mr. Cancelliere's name. I have not heard his  
2 name in this case to date. It's the first time I've heard his  
3 name in the case.

4                   So he may be the principal person who negotiated the  
5 single most important settlement in this Chapter 11 case, but I  
6 haven't heard his name to date. And I haven't heard the CEO, I  
7 haven't heard the CFO, I haven't heard a board member's name,  
8 mentioned as having any involvement with this settlement.

9                   Your Honor, it would be my experience that a  
10 settlement of 8.7 billion dollars that was the sine qua non for  
11 this case being filed, you would have expected that we would  
12 get -- that the debtor would have affirmatively produced  
13 documents from the files of the principal -- the leading  
14 principals of the debtor. That's not an unreasonable request.  
15 We don't have to articulate the individuals. The debtor should  
16 be coming forth with those. So --

17                  THE COURT: I don't disagree with that. But I -- you  
18 know, I asked the question. Look, I made clear, I'm not a fan  
19 of taking depositions of lawyers. And so I pressed to find out  
20 whether there are employees of the debtors who were  
21 substantially involved in the negotiations, because it seems to  
22 me, in the first instance, those are the people who ought to be  
23 deposed, okay, about the negotiations, before you're deposing  
24 outside counsel.

25                  That doesn't mean you don't get depositions of outside

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1       counsel. But in the first instance, the issue of whether there  
2       is some other source for discovery other than the lawyers is --  
3       that's a relevant inquiry by the case law. Okay? And that's  
4       why I asked the question. I'm distressed if, in fact, those  
5       people hadn't been identified to you before.

6                   MR. ECKSTEIN: Your Honor, I concur with the view that  
7       we would prefer not to be taking depositions of outside  
8       counsel. That's not anybody's first choice.

9                   THE COURT: And I think -- and I said this in response  
10      to Ms. Patrick's comments -- I think -- I agree with Ms.  
11      Patrick. I think she stands in a different position than the  
12      debtors. Ultimately the decision is was this an appropriate  
13      exercise of business judgment by the debtors in entering into  
14      the settlement. That may make other third-party discovery  
15      relevant. But the key -- the crucial inquiry is the decision  
16      by the debtors to enter into the settlement.

17                  MR. ECKSTEIN: And we agree with that, Your Honor.  
18      And we have, I think, been as accommodating as possible in not  
19      precipitating these disputes prematurely. And --

20                  THE COURT: Well, you waited until a week before the  
21      discovery cutoff to raise these issues. And then I don't have  
22      a lot of sympathy --

23                  MR. ECKSTEIN: No, Your Honor. No, this was raised as  
24      early as July. The discussions with the debtor -- the debtor  
25      asked us to defer.

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1                   THE COURT: Yes, but nobody called my chambers. I  
2                   made clear at the start of the case, if there's a discovery  
3                   dispute, you call chambers if you can't resolve it. That  
4                   hasn't happened. At the last hearing, when it was clear there  
5                   were all these issues floating around, I scheduled this hearing  
6                   for today. Okay?

7                   MR. ECKSTEIN: Your Honor, as I said, we served the  
8                   discovery requests in August.

9                   THE COURT: Fine.

10                  MR. ECKSTEIN: And there was no surprise. Everybody  
11                  knows exactly what the issues have been. And there are no  
12                  unknown issues in this case. There's a lot of communication  
13                  and the issues have been on the table.

14                  So the question right now is, when will discovery be  
15                  complete? We understand -- I guess today we're told discovery  
16                  will be complete sometime in the first week of October. And  
17                  then the question is, who needs to be deposed. And we've  
18                  gotten a variety of names. The one name at least to date that  
19                  seems most substantive is Ms. Hamzehpour. Ms. Hamzehpour is  
20                  the general counsel of the debtor. I don't know sitting here  
21                  today, whether or not Mr. Marano or Mr. Whitlinger, for  
22                  example, were involved in the negotiations. We have no  
23                  reason -- we don't know. We haven't seen the documents one way  
24                  or the other and nobody has told us. We have been told that  
25                  Ms. Hamzehpour is the most senior person at the debtor who was

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1 responsible for the negotiation of this settlement. And it  
2 would seem logical that notwithstanding the fact that Ms.  
3 Hamzehpour is an attorney, that if Ms. Hamzehpour was acting as  
4 the businessperson -- most senior businessperson responsible  
5 for the negotiation of the settlement -- it would be logical  
6 that we would want to take her deposition. There may be other  
7 depositions that are needed in connection with this settlement,  
8 and once we've --

9                   THE COURT: Let me ask you this, Mr. Eckstein; have  
10 you given other counsel a list of the names of the individuals  
11 whom you wish to depose? It may change as you get more  
12 documents, but have you provided them with a list of names at  
13 this point?

14                  MR. ECKSTEIN: Your Honor, unfortunately because we  
15 have not yet seen the documents, we have not been able to give  
16 them a reliable list. We could only give them the list after  
17 we --

18                  THE COURT: Well you just told me with great  
19 confidence that Ms. Hamzehpour is -- that you want to depose  
20 her.

21                  MR. ECKSTEIN: We've been told by the debtor that she  
22 was the most senior person involved in the negotiations. So  
23 that seems fairly obvious to me; if I've been told by the  
24 debtor that she's the person, that would be a logical person to  
25 depose. We have not heard -- we heard a couple of other names.

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1       We've now heard Mr. Nolan and Mr. Renzi from FTI. Mr. Nolan  
2       and Mr. Renzi of FTI are not lawyers; to the extent they were  
3       involved in making analyses, they would be individuals I expect  
4       we would want to depose.

5                   THE COURT: And I assume that Puntus and the name I  
6       can't read --

7                   MR. ECKSTEIN: Puntus and Chopra --

8                   THE COURT: -- Chopra.

9                   MR. ECKSTEIN: -- I would imagine if they were  
10      involved in the negotiations -- and I'm learning that today --  
11      if they were involved in negotiations, they're individuals we  
12      would expect to depose.

13                  THE COURT: Well, you got a list coming out of the  
14      hearing today of people who I guess you want to depose.

15                  MR. ECKSTEIN: Your Honor, I think that's one thing  
16      that we've accomplished, but the fact is, this is a long time  
17      in coming to just get to this. And without the documents, I  
18      think Your Honor knows better than I, that those depositions  
19      are not official.

20                  THE COURT: Look, I don't know what documents you have  
21      and what documents you don't have. There --

22                  MR. ECKSTEIN: Well --

23                  THE COURT: -- obviously have been a lot of documents  
24      that are produced -- I don't know what hasn't been produced  
25      yet. So --

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1                   MR. ECKSTEIN: Your Honor, I'm told that we will be  
2 getting -- you heard what I heard -- we're told that we're  
3 going to be getting the documents by October 3.

4                   THE COURT: Well, you're told that you're going to get  
5 a rolling production and that production will be completed no  
6 later than October 3. That was what I understood.

7                   MR. ECKSTEIN: So I would imagine that several days  
8 after October 3, we will have been able to review the documents  
9 and we'll then be able to take depositions. There's no great  
10 mystery to how this proceeds. In terms of this discovery, I  
11 don't think it's any more complicated that we'll get the  
12 documents -- we probably need I would think a week to finish  
13 reviewing the documents -- and we can then begin taking  
14 depositions. And the depositions -- it depends on how many  
15 we'll take -- but I'm assuming that there'll be six, seven,  
16 eight depositions that'll be necessary in connection with the  
17 fact discovery.

18                   So from that standpoint, Your Honor, depending upon  
19 how Your Honor wants to handle the hearing --

20                   THE COURT: Let me ask briefly -- let me ask some  
21 other questions.

22                   A subject of discussion at prior hearings has been the  
23 1,500 loan file sample. And I understand -- I don't remember;  
24 the number escapes me -- other than some relatively small  
25 number that they say they can't produce the files for whatever

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1 reason -- is it your intent to ask for additional files in  
2 place of the ones they haven't been able to provide you with?

3                   MR. ECKSTEIN: If I may Your Honor, just one moment?

4                   THE COURT: Yes.

5                   MR. ECKSTEIN: Mr. Bentley tells me Your Honor, that  
6 we're going to rely on what we've received.

7                   THE COURT: Okay. Let me ask you this; does your  
8 expert have the information he needs from the debtor to proceed  
9 with his or her analysis -- let me stop with a question mark.

10                  MR. ECKSTEIN: Your Honor, the experts just received,  
11 in the last few days, the documents which were not in  
12 particularly great form.

13                  THE COURT: I understand that.

14                  MR. ECKSTEIN: And --

15                  THE COURT: Do you know yet whether -- does your  
16 expert --

17                  MR. ECKSTEIN: -- we --

18                  THE COURT: -- have you talked to -- you or one of  
19 your colleagues discussed with your expert whether he or she  
20 has the information believed to be necessary to complete the  
21 analysis?

22                  MR. ECKSTEIN: If I may just one moment, Your Honor?

23                  Your Honor, we have a call tomorrow afternoon with the  
24 experts to get a download from the experts on the status. We  
25 believe that the materials that we're requesting from the

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1 debtor are substantially complete.

2                   THE COURT: Okay.

3                   MR. ECKSTEIN: I will know after we consult with them  
4 tomorrow when they will be in a position to present a useful  
5 report to the Court. I don't know today whether or not it's  
6 realistic to have that done by the 8th of October; my sense is  
7 that would be extremely aggressive and it certainly doesn't  
8 provide sufficient opportunity to discuss it, and to discuss it  
9 with the clients --

10                  THE COURT: Um-hum.

11                  MR. ECKSTEIN: -- and to be thoughtful about it the  
12 way we would like to be. Obviously, people deal with  
13 deadlines, but the materials just came in last week, and so  
14 we're dealing with it as quickly as we can.

15                  THE COURT: Remind me who your expert is. Have you  
16 disclosed the name of the expert or --

17                  MR. ECKSTEIN: I don't think we've actually  
18 disclosed --

19                  THE COURT: Then I'm not forcing you to do it now.

20                  MR. ECKSTEIN: Actually, I think, Your Honor, I think  
21 we have; we filed the application.

22                  THE COURT: You put a retention application in.

23                  MR. ECKSTEIN: Yeah; Brad Cornell -- Brad Cornell and  
24 Moelis are the --

25                  THE COURT: I know who he is; is he from UCLA?

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1                   MR. ECKSTEIN: He's from California, Your Honor; yes.

2                   THE COURT: Yeah, right.

3                   MR. ECKSTEIN: Your Honor, if I may make a couple of  
4 more other observations?

5                   THE COURT: Yeah, go ahead; yeah.

6                   MR. ECKSTEIN: So in terms of the expert and loan file  
7 analysis, I think that we are working extremely quickly right  
8 now to try to meet an aggressive deadline, which I think I  
9 could tell you that from our perspective, is not optimal --  
10 regardless of when this hearing is, you know, when it's  
11 ultimately held in the context of the case -- I don't think  
12 that an October 8th deadline to submit an expert report from  
13 the committee is what we would like to do in light of when the  
14 materials came in. In terms of fact discovery Your Honor, I  
15 think it's pretty clear that September 24th, there will not be  
16 completion of production, and I think some accommodation is, by  
17 definition, going to be required in order to complete fact  
18 discovery.

19                  The third item that I think we have to deal with is,  
20 we now have a new second amended RMBS settlement that deals  
21 with the HoldCo election. I think you'll hear from Wilmington,  
22 but the fact of the matter is, that each of these modifications  
23 are in fact significant. What we understand has happened is  
24 the original settlement -- and it's important to understand --  
25 the original settlement provided that there was going to be an

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1       allowed claim against the two OpCos. And HoldCo was going to  
2       get a release. And so in some respects the HoldCo creditors  
3       were not concerned about the amount of the claim; the only  
4       concern was really by the creditors at the OpCo levels. What  
5       we now understand is --

6                   THE COURT: HoldCo is ResCap, LLC?

7                   MR. ECKSTEIN: Yes; HoldCo -- it's the parent company  
8       of the OpCos that issued the senior unsecured bonds.

9                   What now is occurring in the settlement is the HoldCo  
10      is no longer receiving release; that's material modification.  
11      And I'm told this settlement will provide that to the extent  
12      it's determined that the certificate holders or the trustees  
13      can assert a claim against the HoldCo entity based upon alter  
14      ego or substantive consolidation or the like, that the claim  
15      against HoldCo will be fixed at 8.7 billion dollars. So they  
16      now -- there's now an interest in the amount of the claim and  
17      there's also the uncertainty about whether or not there's going  
18      to have to be a subsequent litigation in the case about the  
19      amount of the claim, based upon assertions against HoldCo.

20                  THE COURT: In light of Mr. Princi's description of  
21      the amended agreement, which you now have, correct?

22                  MR. ECKSTEIN: We've seen a draft of it, I believe.

23                  THE COURT: Well, he said he sent you the --

24                  MR. ECKSTEIN: Well, we saw something last night; I  
25      don't believe it was --

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2                   THE COURT: Okay.

3                   MR. ECKSTEIN: I don't think it's filed, but --

4                   MR. PRINCI: It's filed, Judge.

5                   MR. ECKSTEIN: It's final?

6                   THE COURT: Did you give him a signed copy, Mr.  
Princi?

7                   MR. PRINCI: He does have a signed copy.

8                   THE COURT: Okay.

9                   So what's the relevance of alter ego discovery and  
10 discovery with regard to the HoldCo election, in light of the  
11 amendment to the settlement?

12                  MR. ECKSTEIN: Your Honor, I personally do not think  
13 that anybody wants to inject alter ego issues with the  
14 reasonableness of the settlement.

15                  THE COURT: Do --

16                  MR. ECKSTEIN: The problem is from the standpoint now  
17 of the HoldCo creditors, they may have to be contending with an  
18 8.7 billion dollar claim --

19                  THE COURT: And we may have a litigation at some point  
20 that deals with it. But in terms of the approval of the  
21 settlements, since it doesn't affect a release --

22                  MR. ECKSTEIN: Well, no, the --

23                  THE COURT: Mr. Moloney's getting excited here.

24                  MR. ECKSTEIN: The problem -- and he'll speak -- the  
25 problem is, Your Honor, that if ultimately there is a

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1 determination that there is alter ego liability, the HoldCo  
2 creditors might well want to assert that the liability is not  
3 8.7; it should be 2 or 1 or 3.

4                   THE COURT: They might.

5                   MR. ECKSTEIN: They have a substantive interest in the  
6 amount of the claim.

7                   THE COURT: I mean, just to cut through this; are you  
8 seeking discovery regarding to alter ego or the HoldCo election  
9 in light of the amendment to the agreement?

10                  MR. ECKSTEIN: Your Honor, we asked for alter ego  
11 discovery and it's still pending. We obviously need to look at  
12 where this comes to rest. As I said, we saw this last night,  
13 Your Honor, and in fairness, I'm responding at 10 a.m. this  
14 morning.

15                  THE COURT: Well wait, wait; time out, time out, time  
16 out.

17                  You saw it last night but the check was in the mail  
18 but Mr. Princi or Mr. Lee previously told the Court that -- in  
19 writing and from the lectern -- that further amendment of the  
20 RMBS settlement was in the works that would remove the HoldCo  
21 election from the agreement. I questioned when, and it was a  
22 work in progress. But the fact that it was being negotiated,  
23 it was represented that there was -- I won't put the words -- I  
24 was told that it was being removed, so you've known that.

25                  MR. ECKSTEIN: Your Honor, there were a lot of

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1 different permutations --

2 THE COURT: I understand.

3 MR. ECKSTEIN: -- that were being explored --

4 THE COURT: All right; let me hear from other counsel.

5 MR. ECKSTEIN: -- and until we saw this, we didn't  
6 understand how this was going to come to rest.

7 THE COURT: Okay.

8 MR. ECKSTEIN: So the HoldCo election issue does  
9 change the dynamic in terms of how this affects the HoldCo --

10 THE COURT: It wasn't in there originally.

11 MR. ECKSTEIN: It was not in there originally.

12 THE COURT: So when the schedule was originally set  
13 there was no HoldCo election. They then amended it to include  
14 it. It created quite a storm; and they negotiated to take it  
15 out. So we're back where we started from.

16 MR. ECKSTEIN: We're not back where we started from,  
17 we're in a different place, but -- we don't have the HoldCo  
18 election, but we're not where we started from; there is no  
19 longer a release of HoldCo.

20 THE COURT: Okay.

21 MR. ECKSTEIN: Which is different from what the  
22 original agreement provided.

23 THE COURT: All right; let me hear from other counsel.  
24 Thank you, Mr. Eckstein.

25 Mr. Moloney, you were becoming quite agitated.

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1                   MR. MOLONEY: Well I didn't mean to be agitated, Your  
2 Honor; and happy New Year.

3                   And I did read this agreement last night -- the signed  
4 agreement, and I'd like -- for the record, it's Tom Moloney on  
5 behalf of Wilmington Trust -- and they're representing a  
6 billion dollars of note holders at the Residential Capital, LLC  
7 level, which we sometimes refer to as the "HoldCo".

8                   And Your Honor, I think it's important to note -- at  
9 the last hearing we had I didn't stand up because I thought  
10 we'd have a chance today -- I know deals change all the time in  
11 bankruptcy. But this deal materially changed in a way uniquely  
12 adverse to our clients, and in a way that makes the schedule,  
13 unless it's changed, uniquely unfair to our clients in the  
14 sense that --

15                  THE COURT: How does the agreement as it stands  
16 today -- which I haven't seen yet -- differ from what it was at  
17 the start of the case?

18                  MR. MOLONEY: It differs in two material respects,  
19 Your Honor. First, at the start of the case, there was a  
20 release to the ResCap level. So that -- in some ways, whether  
21 the claim was four billion or eight billion dollars, at the  
22 subsidiary level was a matter of a difference, because it's not  
23 going to be paid hundred cents to the dollar at either level.  
24 So at the HoldCo level, just representing the bondholders, that  
25 issue is not really germane as the agreement was originally

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1       structured. And then it gets changed, and the way it gets  
2       changed, Your Honor, is a way that should give pause to the  
3       Court and to everyone regarding the original deal as well.  
4       Because this is the thirteenth chime that puts doubt on every  
5       single ticking of this clock. Because when the original deal  
6       was approved by the board -- and we just got these board  
7       resolutions within the last few days -- the original deal was  
8       approved by the board and said the board would have to approve  
9       if there's material change. The board did not approve the  
10      HoldCo election according to the interrogatories which we got  
11      on Friday; the board did not approve this change. So if you're  
12      looking for collusion --

13                  THE COURT: Did they approve taking it back out?

14                  MR. MOLONEY: I don't know if they approved taking it  
15       back out because the interrogatories were addressed at the  
16       state of play when it was in place. Immediately, when they  
17       changed this deal, we served them interrogatories; immediately  
18       when they changed this deal, we served our document request;  
19       immediately when they changed this deal, we served a motion to  
20       change the schedule because now these issues are in play.

21                  The second material change is that -- and I don't know  
22       what their theory is -- best as I know, the teaching in the  
23       Second Circuit in the St. Paul fire case is that alter ego is  
24       in an estate claim, not a claim by an individual creditor. And  
25       an individual creditor can't settle -- and a debtor can't

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1       settle an estate claim by giving alter ego claim to one  
2       creditor and not to all other creditors. So if actually  
3       they're creditors at our level, we're creditors at their level  
4       if there's really a resolution of an alter ego issue.

5                   More materially, the arguments regarding alter ego  
6       really do not rely -- do not take you to the ResCap level. The  
7       arguments if there are any alter ego theory, take you exactly  
8       to AFI which is why this hidden waterfall deal -- when I said  
9       that the deal was a secret deal they didn't tell people about,  
10      was that they have two PSAs, and they seem fairly innocuous,  
11      and so we have a deal more or less consistent with this  
12      presentation, and they have two dates for presentation. And we  
13      looked through -- they're not public; these waterfalls are not  
14      public. Even though they want approval of these agreements,  
15      they have not made these waterfalls public. We look to find  
16      the two documents that were referenced in the PSAs; we discover  
17      they don't exist but their other two documents at different  
18      dates -- apparently everyone involved just made a mistake in  
19      the dates or they got re-dated, but there's not documents that  
20      actually relate to the dates in these two agreements. And in  
21      talking to the debtor and in talking to the representative of  
22      the RMBS, they both have a different understanding of what  
23      these documents mean, materially different understanding of  
24      what these documents mean, and both of them have a reading that  
25      is totally different than what I would read or what I think an

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1   objective person would read --

2                   THE COURT: Since we're talking about documents -- I  
3   don't know whether they exist, I don't know what they provide  
4   if they do exist -- how -- referring to them as "the waterfall  
5   documents" -- how do they bear on the approval of the RMBS  
6   settlement?

7                   MR. MOLONEY: The reason they made the change and  
8   eliminated the release, which was material benefit to our  
9   debtor --

10                  THE COURT: The release was a material benefit to your  
11  debtor.

12                  MR. MOLONEY: To our debtor.

13                  THE COURT: Yes.

14                  MR. MOLONEY: The reason it made that change --  
15  according to them in a cryptic footnote -- footnote 13 to the  
16  response, which I don't know how anybody who wasn't involved at  
17  inside baseball would understand -- but apparently a bond  
18  holder called up the lawyer for the RMBS creditors and said  
19  that don't think you're going to get the full 750 million  
20  dollars given by AFI; we're going to ask for a lot of it. At  
21  that point, she calls up the debtor and says we've got a  
22  problem here; I need you to improve my deal in order to improve  
23  my position vis-a-vis the bondholders. That's what that  
24  footnote says. And in fact, we asked the --

25                  THE COURT: That's in the document that they filed

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1 here? Thirteen --

2 MR. MOLONEY: Well, the last document they filed,  
3 footnote 13.

4 MR. PRINCI: The earlier status report, Your Honor, of  
5 last week.

6 MR. MOLONEY: Footnote 13. But in the -- we said, in  
7 our interrogatories, we said when did you start negotiating  
8 this change? The answer is they started negotiating a change  
9 on July 30, 2012. That date may resonate with Your Honor; that  
10 was the date they were in court setting the schedule. They  
11 apparently left this Court and then materially changed the  
12 deal. So how could they now complain that someone's -- why  
13 didn't people come up earlier; why didn't people object  
14 earlier? Well, they changed the playing field in a materially.

15 And the third way they changed the deal materially,  
16 Your Honor, is this fixed claim of 8.7 billion dollars, under  
17 various theories, it could be irrational for them to have an  
18 8.7 billion dollar claim. If their fear of recovery is that  
19 it's RMBS that has the alter ego theory but not GMAC that has  
20 the alter ego theory, it should be, maybe, 3.7 or 2.7 or 1.7.  
21 If their fear of recovery is something else it could be some  
22 different number. They fixed an amount of a claim without any  
23 description what the theory of the claim is.

24 So we need discovery as to theory of the claim,  
25 whatever it is; HoldCo, whatever the theory of claim is they're

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1 preserving, we need discovery as to how they changed the claim  
2 and why -- why is it less advantageous to our clients, and also  
3 Your Honor, our interrogatories ask them to identify all the  
4 businesspeople and all the lawyers who are involved in this  
5 negotiation and authorization. We now have a document which  
6 includes the names you were told and other names. They should  
7 all be custodians; it's less than half a dozen names.

8                   THE COURT: They should all be custodians? I don't  
9 understand.

10                  MR. MOLONEY: Custodians who have to produce e-mail  
11 discovery.

12                  THE COURT: Well --

13                  MR. MOLONEY: None of the businesspeople are  
14 custodians --

15                  THE COURT: -- it doesn't make a difference who the  
16 custodian is; they need to produce the documents. Documents  
17 can be in possession of nineteen different people, it doesn't  
18 make them all custodians.

19                  MR. MOLONEY: Well, Your Honor, as a pri --

20                  THE COURT: They have an obligation to search the  
21 records of any of the debtors for documents responsive to the  
22 request, unless there's a privilege that's being asserted. You  
23 don't designate everybody as a custodian.

24                  MR. MOLONEY: I agree; but in terms of e-mail  
25 searches, Your Honor, in terms of trying to make it less

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1 burdensome to them, in terms of saying they have to have a  
2 targeted search of e-mails of a limited universe of people,  
3 they identified responsively, Kirkland & Ellis, thirteen  
4 people. I think if they looked at the list of people at the  
5 debtors they also get about thirteen people. Of those thirteen  
6 people, nine of them -- all of them -- all the businesspeople,  
7 everyone other than a few MoFo lawyers -- they have not  
8 searched for a single e-mail yet.

9                   THE COURT: All right; is it --

10                  MR. MOLONEY: Now, maybe they're going to search for  
11 all those e-mails and produce them by October 3rd. If that's  
12 their undertaking, terrific, we'll work real hard. We don't  
13 waste time. We have substantive problems with this.

14                  THE COURT: Since I didn't pick up on the significance  
15 of footnote 13 in a document I don't have a copy of sitting in  
16 front of me, just tell me again, Mr. Moloney, what is the gist  
17 of that? What did you take away from the footnote?

18                  MR. MOLONEY: What I took away from the footnote is  
19 that the RMBS creditors were concerned that their PSA waterfall  
20 might be upset as a result of the examiner's reports, as a  
21 result of claims that we might argue against AFI on behalf of  
22 the note holders and that either some of that 750 which they  
23 had hoped to go to them, or money beyond that 750, would go to  
24 us and not to them. And so they asked the debtor to change the  
25 deal.

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1                   I think the debtor was concerned that they had a PSA  
2 agreement with Kathy and not with our group, and that,  
3 therefore, if they accommodated that request, they would create  
4 a voting block at the parent-company level that would support  
5 their plan. So I think, putting it another way, it's  
6 collusion; putting it another way, we want to put some sunshine  
7 on something that doesn't look good, doesn't smell right, and  
8 it's hard to explain.

9                   THE COURT: Okay. Make it really simple for me. What  
10 is it that you're seeking in discovery that you believe you  
11 have not received so far?

12                  MR. MOLONEY: We would like them to produce discovery  
13 related to the HoldCo election, how it was arrived at and why  
14 it was changed, and why it's changed again, including the names  
15 of the people who were involved in the most recent change, who  
16 approved it and who negotiated it. We would like discovery as  
17 to the basis for the claim which they are now preserving and  
18 which they have now set an amount of at 8.7 billion dollars.  
19 And we would like to be sure that the e-mail productions they  
20 produce include the e-mails of all the people who they've  
21 identified in these interrogatories as having been involved in  
22 negotiation or approval of this deal, which is about thirteen.

23                  THE COURT: Okay; thank you, Mr. Moloney.

24                  MR. MOLONEY: Thank you.

25                  THE COURT: Who else wants to be heard?

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1                   MR. SHORE: Good afternoon, Your Honor; Chris Shore  
2 from White & Case on behalf of the junior secured notes.

3                   Let me kind of answer a question that Your Honor asked  
4 on footnote 13 and how we perceived it.

5                   As secured parties in this case, we are nonetheless  
6 still focused on some key debtor boxes within the capital  
7 structure. When this deal was originally proposed, our view of  
8 the settlement, which is shared by many people --

9                   THE COURT: Let me just stop you for a second.

10                  Mr. Princi, I got this giant binder in front of me.  
11 Is the status report from the last hearing that has this  
12 footnote 13, is it in the binder?

13                  Somebody have a copy of it?

14                  THE CLERK: Sir.

15                  UNIDENTIFIED SPEAKER: Your Honor, may I approach?

16                  THE COURT: Yeah, please. I'll give it back to you.  
17 Want to make sure there are no secret notes? It's all in  
18 invisible ink, so it's okay.

19                  MR. SHORE: Let me -- we don't -- we can do it  
20 without. It's all right.

21                  THE COURT: Okay, go ahead, Mr. Shore.

22                  MR. SHORE: We can do it without.

23                  THE COURT: No, I mean, I -- Mr. Moloney talks about  
24 it as well, so I -- but go ahead.

25                  MR. SHORE: We looked at the deal as follows: 8.7

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1 billion is a huge number.

2 THE COURT: It's a lot of money.

3 MR. SHORE: It's a huge number in the context of what  
4 anybody was expecting RMBS settlements would be on putback  
5 litigation and the like.

6 From creditors' perspective at the main box, is it  
7 really didn't matter. It kind of worked for everybody. 8.7  
8 billion dollar headline number is great for somebody who is  
9 trying to negotiate deals in other cases as they said they're  
10 doing. 8.7 billion dollar claim against small boxes is kind of  
11 ice in winter for debtors to agree to. The problem all began  
12 when they started applying an 8.7 billion dollar number at  
13 places where they could actually get a recovery. From our  
14 perspective, this settlement motion began on August 15th when  
15 the HoldCo election was put in.

16 Now, they have said no blood, no foul, we've removed  
17 the HoldCo election; but as has been pointed out to you, it's  
18 not a removal. ResCap, LLC is one of your fifty-one debtors.  
19 They are now proceeding with a motion that says we'd like you  
20 to allow an amount of a claim against us in the amount of 8.7  
21 billion dollars; we just want to reserve for a later date the  
22 issue of whether we actually owe any of that money. That is a  
23 significant problem for us and one which we believe that the  
24 fiduciaries of ResCap --

25 THE COURT: Hang on a second. We've had this

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1 continuing problem of the construction in JSA is impossible to  
2 deal with; I'm sorry.

3                   Go ahead, Mr. Shore.

4                   MR. SHORE: That is one which we believe a fiduciary  
5 of ResCap, LLC should respond to. To that end, we sent out  
6 last week very minimal document requests saying we want the  
7 board minutes of the debtors talking about the HoldCo election  
8 and the removal of the HoldCo election --

9                   THE COURT: If they took out the HoldCo election but  
10 left the release of HoldCo, that would take us back to the way  
11 this started out.

12                  MR. SHORE: That would take us back.

13                  THE COURT: And then you wouldn't have a problem.

14                  MR. SHORE: Correct. But we don't have that.

15                  THE COURT: Yeah.

16                  MR. SHORE: And I don't believe that anybody's going  
17 to go for, right. When someone starts -- I think footnote  
18 13 -- I know I said I wouldn't refer to it -- means we got a  
19 lot of criticism -- someone got a lot of criticism -- for  
20 agreeing to a great headline number against some empty boxes,  
21 and they wanted to protect themselves from criticism by saying  
22 no, no, no, I've got an ability to get some of my claim against  
23 a real box.

24                  THE COURT: Bear with me a second.

25                  MR. SHORE: So I don't think -- maybe they will go

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1 back to a situation in which ResCap, LLC and the other debtors  
2 get a release and the claims exist against the seller entities  
3 and the depositor entities. But that's not where we are. What  
4 we got was the agreement signed last night which leaves that in  
5 place. We've asked for board minutes and we've asked for  
6 communications with people regarding the HoldCo election and  
7 the HoldCo removal and these claims of alter ego. I don't want  
8 to get into the substance of the alter ego, I just want to know  
9 what people were talking about that they thought this was a  
10 good idea, we're going to allow a claim in amount, but just  
11 reserve the right to argue liability later, if the theory that  
12 people want to press is that the 8.7 number was an irrational  
13 number when one looked at recoveries in the case.

14                  We've been deferred by the debtors on that, they've  
15 taken the position that we should just talk about this at some  
16 later date because again, they're taking the position no blood,  
17 no foul. We're expecting to get documents from them. We've  
18 asked for a 30(b)(6) deposition for somebody to talk about that  
19 because, of course, we don't know who, if anybody, was involved  
20 in the decision first to do a HoldCo election and then to  
21 remove it without getting a release.

22                  THE COURT: Mr. Princi, can you answer that question  
23 right now?

24                  MR. PRINCI: As to who gave the release?

25                  THE COURT: Who made the decision to grant the HoldCo

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1 election; who made the decision to take it out and remove the  
2 release?

3 MR. PRINCI: Your Honor, ResCap, LLC --

4 THE COURT: I -- a person.

5 MR. PRINCI: Off the top of my head, no, Your Honor.

6 THE COURT: Any of your many colleagues able to answer  
7 this question?

8 MR. PRINCI: Not instantly; but Your Honor, this  
9 whole --

10 THE COURT: No, I just wanted -- if you can't answer  
11 it --

12 MR. PRINCI: I don't. I can't answer it.

13 THE COURT: And none of your colleagues who are here  
14 can answer the question of who at ResCap, using -- who at the  
15 debtors -- made the decision to first amend it to add the  
16 HoldCo election, then to take it out, but also to take out the  
17 release?

18 MR. PRINCI: What I don't want to do Your Honor, is  
19 without double-checking, state an incomplete record for Your  
20 Honor. Certainly Ms. Hamzehpour was involved; it was taken out  
21 with board approval. But I can get you that information.

22 THE COURT: See, look, Mr. Princi, the one thing I  
23 have to say from Mr. Moloney and Mr. Shore, that didn't come  
24 across to me before -- and I guess it's because I'm dealing  
25 with a revised settlement agreement I don't have, I couldn't

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1 compare it to one that existed before that I did see -- is that  
2 it does seem to me to be a material change in the business  
3 terms when you take the HoldCo election out but also take out  
4 the release. That, you agree, is a substantive change from  
5 what was initially presented to the Court?

6 MR. PRINCI: No, Your Honor, they misstated what the  
7 agreement says. So this entire thing is flawed, entirely; I  
8 want to clear it up.

9 THE COURT: Well, let me hear the rest of Mr. Shore;  
10 go ahead, Mr. Shore.

11 MR. SHORE: Let me address that, and I think they'll  
12 say well the original application was to allow an 8.7 billion  
13 dollar claim and it didn't specify against which debtor. I  
14 think that's what they're going to say.

15 Do they mean they came in with an application to this  
16 Court to allow an 8.7 billion dollar claim against every debtor  
17 in this case, regardless of whether they were involved at all  
18 in any RMBS activity? The rational reading of the agreement,  
19 and something that would have had to have been cleared up  
20 before Your Honor would have agreed, is exactly which debtors  
21 are getting claims of 8.7 billion dollars against them.

22 And I want to make this clear, because we have growing  
23 concerns about this issues; there are fifty-one debtor estates  
24 here. Your Honor had written on the issue of problems in the  
25 thorny situations that arise when one set of professionals and

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1     management is trying to manage through these interdebtor  
2     conflicts. But when they file a status report -- this is from  
3     yesterday, paragraph 30: "The debtors and the parties can  
4     continue to focus on the primary task at hand, namely whether  
5     the 8.7 billion total allowed claim is in the best interest of  
6     the estate."

7                   We're not here talking about the best interest of a  
8     fifty-one debtor, nonconsolidated estate. We're talking about  
9     whether it's in the best interest of each of the estates that  
10    are affected by this settlement agreement. The agreement that  
11    just came up is a settlement by a debtor box that we care  
12    about, ResCap, LLC. It is coming to this Court at this point  
13    saying please allow against me an 8.7 billion dollar claim;  
14    just reserve everybody's rights later to figure out whether  
15    that claim is going to be cut down or allowed in the sense that  
16    alter ego liability or some other basis for alleging that this  
17    debtor is liable for other debtors' debts exists. So that's  
18    what we're focused on.

19                  THE COURT: But why isn't it appropriate for that  
20    issue to be deferred?

21                  MR. SHORE: It is appropriate for that issued to be  
22    heard, but in the context --

23                  THE COURT: No; deferred.

24                  MR. SHORE: Oh, deferred?

25                  THE COURT: Yeah. Why isn't it appropriate for that

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1 issue to be deferred? The issue isn't being decided.

2 MR. SHORE: I'm not -- I want to talk to a fiduciary  
3 of ResCap, LLC, the person who made the decision as to why  
4 they're doing it. If in fact the explanation is because this  
5 benefits the other estates, it allows sales to go on in other  
6 estates, it allows other estates to cordon off their liability  
7 and reduce litigation, that is an inappropriate answer. Under  
8 Augie/Restivo, this Court has to look at each debtor action on  
9 the basis of the effect on that debtor estate. I suspect --  
10 notwithstanding having said this and they're being able to  
11 prepare their witness ad nauseum with respect to this -- that  
12 the real answer as to why ResCap, LLC did this -- and kind of  
13 what you've heard today -- is to allow sales to go on at other  
14 debtor estates or to cordon off liability and litigation at  
15 other debtor estates that really doesn't provide a direct  
16 benefit to ResCap, LLC.

17 THE COURT: But why isn't this like any other  
18 reservation of rights? The issue hasn't been resolved as to  
19 whether there is an alter ego claim; if there is, against what  
20 entities, does it pass all the way up to AFI? I don't know.  
21 It's not deciding those issues.

22 MR. SHORE: I think about it this way. Assume the  
23 proof of claim is the complaint. What's going on here is the  
24 proof of claim, the complaint is I'm suing you for 8.7 billion  
25 dollars on these following theories. And the answer that's

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1 coming to the complaint right now is I agree, that there is an  
2 8.7 billion dollars of damages you've suffered; I just dispute  
3 all these other things.

4                   THE COURT: Well, let me ask you this; if the language  
5 in the agreement were modified such that it's not only whether  
6 the claim exists against HoldCo, but the amount of the claim,  
7 do you agree that that would satisfactorily resolve your issue?

8                   MR. SHORE: If people, and obviously Your Honor, is  
9 going to -- if that's the order that goes in, Your Honor's  
10 keeping an open mind about it and people want to have a trial  
11 about 8.7 billion dollars and a bunch of little boxes within  
12 the capital structure, okay; that's fine.

13                  THE COURT: Look, I understand -- your point, if I  
14 understand it correctly, is that this agreement would fix any  
15 future -- in the event of an alter ego determination, this  
16 agreement would fix the amount of the claim against HoldCo at  
17 8.7 billion dollars.

18                  MR. SHORE: Yes.

19                  THE COURT: Okay. And I understand the concern you're  
20 raising. If the agreement were further amended to make clear  
21 that the fact -- the existence of a claim and the amount of a  
22 claim are all reserved --

23                  MR. SHORE: No collateral estoppel effect, no res  
24 judicata effect.

25                  THE COURT: -- then you would be satisfied.

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1                   MR. SHORE: We'd be satisfied, but I'd still want the  
2 answer to why there --

3                   THE COURT: Well, but you might get the answer but not  
4 right now. I mean, there is -- look, I want to make sure  
5 everybody gets their full and fair opportunity at this hearing,  
6 but it ought to be confined to the issues that have to be  
7 decided, okay? I understand the issue you're -- and Mr.  
8 Moloney's raising his finger because he's getting concerned  
9 again. I don't want anything sort of backdooring an issue; I  
10 don't want to be told later in the case when you approve the  
11 settlement -- if I approve the settlement -- the result of that  
12 is in the event of an alter ego determination, you don't get to  
13 decide how much the claim against HoldCo should be; it's 8.7  
14 billion dollars by virtue of the agreement you approve. It may  
15 be that if there's an alter ego determination it should be 8.7  
16 billion dollars.

17                  MR. SHORE: It may be.

18                  THE COURT: And nothing that I would determine now  
19 would decide that one way or the other. But I understand your  
20 concern about is this agreement trying to fix the amount of a  
21 claim just leaving the only issue as to whether alter ego  
22 applies.

23                  MR. SHORE: That would be it --

24                  THE COURT: Okay.

25                  MR. SHORE: -- and it would spill over into numerous

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1 potential issues in the case -- estimation for voting purposes,  
2 anything else like that where we're really talking about an 8.7  
3 billion dollar number. If Your Honor is saying I can sit and I  
4 can have a trial, and I can hear 8.7 as an appropriate number  
5 against these other debtors but when it comes to that 8.7  
6 translating itself into actual votes in a case or actual  
7 dollars of distribution, that it's going to be a fair game;  
8 then we're going to --

9                   THE COURT: I understand your point, Mr. Shore; any  
10 other points you want to make?

11                  MR. SHORE: No, Your Honor.

12                  THE COURT: Okay.

13                  Hold on Mr. Princi, there's a lot of people who want  
14 to speak before you.

15                  MR. WOFFORD: Your Honor, Keith Wofford from Ropes &  
16 Gray on behalf of the institutional investors.

17                  Just a bit of clarification about the statements about  
18 change to the agreement. The original agreement itself, Your  
19 Honor -- and everyone here is represented by sophisticated  
20 counsel -- provided that the settlement was between ResCap --  
21 which is Residential Capital, the parent and its indirect  
22 subsidiaries, and that was defined as ResCap, and the entity  
23 giving the claim in the original agreement that was filed just  
24 after the outset of the cases was that ResCap, meaning the  
25 debtors, will provide a general unsecured claim of 8.7 billion

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1 dollars.

2 So Your Honor, obviously everyone here has been  
3 concerned about notice and about accurately portraying what the  
4 debtor is doing. We endeavored, with the debtors, with the  
5 HoldCo election to clarify -- because clearly the only debtor  
6 mentioned in the original agreement as giving a claim was  
7 HoldCo, ResCap itself. We knew, in fact, that there would be  
8 questions that would come up about which debtors would and  
9 which debtors were not giving a claim. So rather than have  
10 that be a mess, when the settlement actually got litigated, we  
11 chose, after discussion with the debtors, to clarify that  
12 issue. The method of the clarification was in fact this HoldCo  
13 election. After discussion, frankly, about potential  
14 possibilities about how to make that clarification, the debtors  
15 proposed that, we negotiated it, and it was put into the  
16 agreement. As a result of the objections of many -- oh, by the  
17 way, when the HoldCo election was put in the agreement, it was  
18 made severable, as you may recall. That is --

19 THE COURT: I don't recall.

20 MR. WOFFORD: Okay.

21 THE COURT: Go ahead.

22 MR. WOFFORD: Well, it was made severable so that if  
23 people -- perhaps Mr. Moloney's clients or others -- objected  
24 to the HoldCo election, that it could be, if the debtors could  
25 not satisfy their burden with respect to that proposed claim,

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1 it could be turned down by the Court without vitiating or  
2 throwing out the rest of the settlement. Because it was  
3 severable and because there was such a tumult that arose around  
4 it, when the debtors asked us would you consider removing it,  
5 we agreed to remove it. But we would not agree to the  
6 following, which is since the original settlement provided that  
7 there was the possibility and in fact a claim at HoldCo, in  
8 exchange for a HoldCo release, if the possibility of a claim or  
9 a claim being allowed was removed from the settlement, we said  
10 no claim, there's no consideration for that debtor, it is in  
11 fact as the Wilmington folks would call a preferred subcon, for  
12 other debtors to pay with their claim being granted for a  
13 HoldCo release, and we said fine, remove it; remove the claim,  
14 remove the release.

15 The creditor's committee requested, among others,  
16 perhaps with the debtors, that so as to avoid the possibility  
17 of having to re-litigate the size of the claim if alter ego  
18 liability was established, that we put in the provision that  
19 you will see shortly, that says in fact that if there is a  
20 HoldCo alter ego claim allowed, that that would be fixed at the  
21 already-settled 8.7 number.

22 THE COURT: So let me -- if there is a claim against  
23 HoldCo, what's the theory of liability of HoldCo?

24 MR. WOFFORD: Alter -- direct alter ego liability.

25 THE COURT: Okay. So does that necessarily -- if the

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1 amount -- if this agreement provides that the amount of the  
2 claim against HoldCo is 8.7 billion, then don't I  
3 necessarily -- doesn't -- don't you all necessarily have to try  
4 alter ego now, because why -- are -- those parties-in-interest  
5 who would be very substantially adversely affected by an 8.7  
6 billion dollar claim against HoldCo, aren't they entitled to  
7 challenge the alter ego theory before the Court determines that  
8 okay, it's 8.7 billion and we'll later hear -- I mean, isn't  
9 that so?

10 MR. WOFFORD: Our view is no, Your Honor, because --

11 THE COURT: Why?

12 MR. WOFFORD: -- you are trying whether the settlement  
13 amount of 8.7 billion dollars is reasonable. It does not  
14 establish whether or not there's any alter ego liability of the  
15 parent at all.

16 THE COURT: Well, I'd have to look at --

17 MR. WOFFORD: If they are in fact an alter ego --

18 THE COURT: Mr. Wofford, let me stop you.

19 MR. WOFFORD: Yes. Sure.

20 THE COURT: No, I disagree, because I have to look at  
21 whether -- what the basis -- I can't decide that a -- 8.7  
22 billion is a reasonable settlement amount for HoldCo unless I  
23 examine, not decide the issue, but look at what -- the  
24 arguments and some evidence in support of and in opposition to  
25 the claim. I just can't take a flier on it and say because the

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1 debtors say I ought to approve 8.7 billion against HoldCo, I'm  
2 supposed to do that. That's just not what the standard for  
3 approving a settlement is.

4                   MR. WOFFORD: Well, Your Honor --

5                   THE COURT: How can I decide that --

6                   MR. WOFFORD: -- again --

7                   THE COURT: -- it's above the minimum amount to  
8 determine it's reasonable if I don't at least examine the basis  
9 for the claim against HoldCo.

10                  MR. WOFFORD: The reason, Your Honor, is because --  
11 the formal reason is the order is not establishing the  
12 allowance of the claim. It's merely --

13                  THE COURT: Well --

14                  MR. WOFFORD: -- fixing the amount --

15                  THE COURT: -- come on.

16                  MR. WOFFORD: -- if it is allowed.

17                  THE COURT: All right. So do you agree that if the  
18 release is removed that the agreement can make clear that the  
19 amount of any claim against HoldCo is reserved?

20                  MR. WOFFORD: We were always comfortable with that  
21 position, Your Honor. Again, the fixing was at the best of the  
22 creditors' committee that reques -- and I believe the debtors  
23 also.

24                  THE COURT: Mr. Eckstein's getting all excited now.

25                  MR. WOFFORD: If they in fact take the position today

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1     -- if everyone's taking the position today --

2                 THE COURT: Let me --

3                 MR. WOFFORD: -- in fact --

4                 THE COURT: -- stop -- hold on.

5                 MR. WOFFORD: Yeah.

6                 THE COURT: Stop. Is there anybody here who wants to  
7 stand in opposition to clarifying this agreement to make clear  
8 that the amount of any claim against HoldCo would be reserved,  
9 as well as the alt -- the underlying alter ego issue?

10                MR. PRINCI: Your Honor, the debtors have a business  
11 judgment, and that business judgment goes to the fairness and  
12 reasonableness of 8.7 being the appropriate --

13                THE COURT: Could you answer my question?

14                MR. PRINCI: Yes, I'm trying to explain, Judge,  
15 because --

16                THE COURT: No, give me the bottom line and then I'll  
17 let you explain.

18                MR. PRINCI: The bottom line, Judge, is we think it  
19 would be bad for the ResCap LLC --

20                THE COURT: Okay.

21                MR. PRINCI: -- estate.

22                THE COURT: Alter ego is open for discovery. I can't  
23 go ahead -- if -- unless the debtors agree that the issue of  
24 the amount of any claim against HoldCo is reserved for later  
25 determination, then necessarily I have to be able to evaluate

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1 the alter ego claim. You want to take that position, that's  
2 fine. Alter ego discovery is fair game for everybody.

3 MR. PRINCI: Your Honor, may I be heard, please?

4 THE COURT: Go ahead.

5 MR. PRINCI: Thank you. Judge, we think it's -- we  
6 want to make clear for the record -- because we are  
7 fiduciaries -- we want to make clear for the record what we  
8 think the impact of this is, okay? So we think it's not good  
9 for the ResCap LLC estate because, and this is why we did what  
10 we did in the second amended agreement --

11 THE COURT: Which I haven't seen and --

12 MR. PRINCI: -- I --

13 THE COURT: -- therefore -- I keep getting surprises,  
14 Mr. Princi, when you describe what it does, and then Mr.  
15 Moloney, and Mr. Shore. I hear very different things about  
16 what this amended agreement does. It really supports the  
17 committee's view that none of this should be happening right  
18 now.

19 MS. PATRICK: Your Honor --

20 MR. PRINCI: Your Honor --

21 THE COURT: No.

22 MR. PRINCI: -- I'd like to --

23 THE COURT: Sit down, Ms. Patrick.

24 MR. PRINCI: -- be heard. Okay. Your Honor, I have  
25 to respect people's ability to come to the podium and make the

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1       allegations they do, but I need an opportunity to clarify the  
2       mistakes that have been made by people. And I'm going to try  
3       to do that.

4                   We don't believe it's in the best interest of ResCap  
5       LLC's estate. That's the estate that Mr. Shore's clients have  
6       an interest in. Now, Mr. Shore's clients also have an interest  
7       in the operating company estates, okay, because they're  
8       secured. Their collateral is also at the opco level, all  
9       right, but that's the only estate that Mr. Moloney's clients  
10      have an interest in.

11                  Now, independent of how they look at it, on behalf of  
12     ResCap LLC, we don't think it's in ResCap LLC's interest to  
13     leave it open. Why? Because we have done a lot of work as to  
14     what the appropriate amount, what would be fair, what would be  
15     reasonable to settle the underlying rep and warranty claims.  
16     So we look at this way. The rep and warranty claims arise  
17     because two parties are in privity of contact -- contract; the  
18     trusts and then the operating companies. We think 8.7 is a  
19     fair number for the rep and warranty claims there.

20                  That -- our view on that won't change whether there is  
21     an alter ego basis or not.

22                  THE COURT: Yes, but you capped the amount of the  
23     liability at 8.7 billion whether there's a claim against HoldCo  
24     or not. What -- if Mr. Moloney or Mr. Shore subsequently wants  
25     to argue a legal and factual basis why the amount of the claim

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1       against HoldCo should be less than 8.7 billion, that's what  
2       they want the opportunity to do.

3                   MR. PRINCI: Then, we will do that. If the  
4       institutional investors will agree, we will have no problem,  
5       Judge, entering into a further amendment and doing that, but I  
6       want to state for the record why we believe this is not in the  
7       estate's interests.

8                   THE COURT: Okay. I'm -- what I'm telling you is if  
9       you don't want to agree --

10                  MR. PRINCI: No --

11                  THE COURT: -- that's fine, but the result of that is  
12       all discovery about alter ego is relevant to the issue of  
13       whether the settlement is going to be approved.

14                  MR. PRINCI: I --

15                  THE COURT: Okay?

16                  MR. PRINCI: Your Honor, I hear you --

17                  THE COURT: It's as simple --

18                  MR. PRINCI: -- loud and --

19                  THE COURT: -- as that.

20                  MR. PRINCI: And I hear you loud and clear. And so if  
21       the institutional investors are willing to further amend the  
22       agreement, we will do that. But I don't think it's fair to the  
23       debtors, Your Honor.

24                  THE COURT: Why -- okay. That's fine. If they don't  
25       want to, that's okay. That's their decision, and your -- and

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1 the debtors' decision, okay?

2 MR. PRINCI: No, we're prepared to do that --

3 THE COURT: But --

4 MR. PRINCI: -- Judge.

5 THE COURT: -- what I don't understand, Mr. Princi, is  
6 if you or Ms. Patrick says -- or Mr. Wofford says no, we're not  
7 willing to change the agreement. We believe part of the  
8 consideration for this agreement is fixing the claim against  
9 the -- against HoldCo at 8.7 billion in the event of an  
10 ultimate alter ego determination. That's fine, but it makes  
11 the alter ego issue relevant to approval of the settlement.

12 MR. PRINCI: I --

13 THE COURT: It's not -- I'm not forcing you to do  
14 anything.

15 MR. PRINCI: -- I don't --

16 THE COURT: I'm just telling you what the price is if  
17 you don't agree.

18 MR. PRINCI: Your Honor, quite candidly, all I'm  
19 trying to do is just state for the record why we think the  
20 position that the -- that these parties who have an interest in  
21 ResCap LLC and what they want to do by undoing the deal, which  
22 we're happy to do, they're the -- it's, if you will, their  
23 money, but that doesn't change our fiduciary obligation. I  
24 want to state on the record why we did this and why we think is  
25 a mistake.

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1                   But that having been said, it's simple. To leave that  
2 open means you -- this -- that estate will face a plenary trial  
3 on the issue of whether the forty-five-billion-dollar potential  
4 claim that they will potentially assert --

5                   THE COURT: Why forty-five -- isn't it capped at 8.7  
6 billion?

7                   MR. PRINCI: No, no. Judge, when you uncap it, I  
8 think you're talking about a --

9                   THE COURT: No, time out. I -- what I understood, and  
10 you're saying the cap is gone, then you're probably better off  
11 going ahead and dealing with the alter ego issue now. I mean,  
12 if the maximum amount of the claim against any of the debtor  
13 entities is capped at 8.7 billion dollars, the issue then  
14 becomes which debtor entities will the claim lie against. What  
15 I've heard from Mr. Moloney and Mr. Shore is they don't believe  
16 the claim should lie against HoldCo, okay?

17                  If the settlement purports to resolve the issue by  
18 fixing the amount, if -- assuming alter ego liability is  
19 established, that's one thing, in which case alter ego is a  
20 relevant issue for the settlement approval hearing. I  
21 didn't -- so that's why when you say it's forty-five billion, I  
22 didn't understand that unless -- if Ms. Patrick says --

23                  MR. PRINCI: No.

24                  THE COURT: -- no, it's either this or nothing, okay.

25                  MR. PRINCI: I'm saying that's what --

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1       THE COURT: Then go ahead and take your discovery --

2       everybody take their discovery about --

3       MR. PRINCI: Your Honor --

4       THE COURT: -- alter ego.

5       MR. PRINCI: -- that's what -- that was my -- that  
6       will be the risk that the LLC estate, by removing it -- but you  
7       know what, we're going to try to remove it --

8       THE COURT: Well --

9       MR. PRINCI: -- period. That's what they want us to  
10      do. The Court sees that also as sensible, so we're going to  
11      try to do that, and we'll know very shortly, I suspect, whether  
12      we'll have the agreement, because I suspect they're going to  
13      stand up and take a position.

14       THE COURT: If you don't --

15       MR. PRINCI: If they say that they'll undo it, we'll  
16      undo it. And there will be no -- there will be absolutely no  
17      agreement whatsoever by ResCap LLC in any way, shape, or form  
18      with the institutional investors, be completely --

19       THE COURT: There can be an agreement that makes it  
20      clear that the claim is capped at 8.7 billion dollars. I mean,  
21      otherwise go ahead with alter ego. I'm not telling you not to.

22       MR. PRINCI: No, no, no. I understand.

23       THE COURT: But you're telling me it's -- you were  
24      telling me that the HoldCo election and alter ego is not  
25      relevant to anything that I have to decide as part of approval

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1       of the settlement. And what I'm hearing from Mr. Moloney and  
2       Mr. Shore is exactly this is why it's relevant.

3                   MR. PRINCI: Judge --

4                   THE COURT: Okay. Why don't you go confer with Mr.  
5       Wofford and Ms. Patrick?

6                   MR. PRINCI: Okay, Judge. I'm sorry, but I need to be  
7       able to address to the Court the underlying fact --

8                   THE COURT: No, you need to --

9                   MR. PRINCI: -- that you accept --

10                  THE COURT: -- go talk to them. I'm taking a ten-  
11       minute recess.

12                  (Recess from 12:31 p.m. until 12:44 p.m.)

13                  THE COURT: Please be seated.

14                  Mr. Princi?

15                  MR. PRINCI: Your Honor, what a difference a recess  
16       can make.

17                  So we have some good news. And first, I do want to  
18       clarify, Judge. I was misunderstanding you, as my colleagues  
19       immediately yelled at me when we took the recess. So what I do  
20       understand and what Ms. Patrick understands the Court was  
21       asking to consider, we do think is in the best interests of the  
22       ResCap LLC estate. And so -- but I don't get -- what we've now  
23       agreed to -- what we're going to further amend the agreement to  
24       reflect, so I don't get that potentially wrong, I'm going to  
25       let Ms. Patrick put that on the record.

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1                   MS. PATRICK: Mr. Wofford walked away with my notepad,  
2 so I'll do it from memory.

3                   THE COURT: You want to wait for Mr. Wofford to come  
4 back?

5                   MS. PATRICK: Well, yeah. I have it.

6                   THE COURT: We can wait for him to come back.

7                   MS. PATRICK: Thank you, because I wrote it down very  
8 carefully --

9                   THE COURT: Let's make sure we get it --

10                  MS. PATRICK: -- to address the Court's concerns.  
11 Thank you, sir.

12                  THE COURT: -- make sure we get it right.

13                  MS. PATRICK: Thank you.

14                  THE COURT: Go ahead --

15                  MS. PATRICK: All right.

16                  THE COURT: -- Ms. Patrick.

17                  MS. PATRICK: On behalf of the steering committee  
18 investors, we will agree to take out the fixed amount of the  
19 claim against the holding company. All parties will reserve  
20 all rights with regard to the amount and substance of the RMBS  
21 trust's claims against the holding company. They file their  
22 proofs of claim. People can object to them on that basis.

23                  But we will also agree that while we must prove the  
24 amount of the claim, any liability proved will be capped  
25 regardless of the evidence at 8.7 billion dollars, which I

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1 believe was what the Court suggested. We think it was fine.

2 It was always fine with us, so --

3 THE COURT: That's what I was trying to suggest.

4 MS. PATRICK: Yes. Well, we heard you, And I hope we  
5 got it right. I think that, in that event, Your Honor, should  
6 take the issue of needing to prove alter ego or anything off  
7 the table, because it reserves everything for another day, but  
8 gives the senior unsecured holders the benefit knowing that  
9 the --

10 THE COURT: All right.

11 MS. PATRICK: -- claim is capped at not more than.

12 THE COURT: Thank you, Ms. Patrick.

13 MR. MOLONEY: Your Honor, can I respond?

14 THE COURT: Come on, Mr. Moloney. What can you object  
15 to?

16 MR. MOLONEY: I don't. I think --

17 THE COURT: Oh, how about that?

18 MR. MOLONEY: Your Honor, I think this --

19 THE COURT: I'm sorry, I don't mean to tease. This is  
20 an important issue.

21 MR. MOLONEY: No, it is important, and I think Your  
22 Honor got us to the right place to take --

23 THE COURT: Just identify yourself for the record.

24 MR. MOLONEY: Tom Moloney for the record, for  
25 Wilmington Trust.

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1                   I think you got us to the right place on one of the  
2 three issues I raised, which is I think we don't need to pursue  
3 alter ego discovery at this time with the new agreement on the  
4 table.

5                   However, we did have a release, and that did get  
6 changed. And it did get changed, we believe, for planned  
7 reasons, which does suggest collusion, which does go to the  
8 standard which the -- the Court -- Your Honor is going to have  
9 to follow and look at the overall agreement. And so we still  
10 need process discovery. And still, as a matter of public  
11 record, they should publicize what this waterfall is. Since  
12 they filed applications to assume these agreements, people  
13 should understand what it is they've assumed, otherwise you're  
14 going to have a replay of this whole store about I thought the  
15 deal was this; I thought the deal was that. Publicize it.

16                  And Your Honor, I -- in terms of what the deal was --

17                  THE COURT: I kept looking for footnote 13. I can't  
18 find whatever document --

19                  MR. MOLONEY: It was their exclusivity filing, Your  
20 Honor. And -- you know, it was their exclusivity filing, where  
21 they --

22                  THE COURT: Somebody have a copy I can look at? No?

23                  MR. MOLONEY: I've asked for someone from the office  
24 to bring it here.

25                  THE COURT: I can --

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1                   MR. PRINCI: Your Honor, can I approach with a --

2                   THE COURT: Do you know what the ECF number is?

3                   MR. PRINCI: The ECF number? It's docket 1371, Your  
4 Honor.

5                   THE COURT: Okay. Well, that -- can I see the 13  
6 footnote? What page is it on? I've had --

7                   MR. MOLONEY: Your Honor, I have a paper copy. If I  
8 may approach the bench, Your Honor?

9                   THE COURT: I got it on the screen. If you can tell  
10 me what page it's on.

11                  MR. MOLONEY: I'll find it.

12                  MR. PRINCI: Page 13.

13                  THE COURT: Page 13.

14                  MR. MOLONEY: It says it was a phone call from one of  
15 the holders who --

16                  THE COURT: I'm going to read it. I have it on here.

17                  MR. MOLONEY: Okay.

18                  THE COURT: All right, Mr. Moloney.

19                  MR. MOLONEY: Your Honor, if -- either this is the  
20 explanation in the pleading with the Court, or what someone  
21 stood up and test -- and told you a minute ago was the  
22 clarification of the original deal was the explanation, or  
23 there's another explanation which we still haven't heard.  
24 They're not consistent. And in terms of what the original deal  
25 was, I went back and looked at the motion filed on June 11th.

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1                   And in the first paragraph of the 919 motion filed on  
2 June 11th, says they're going to resolve this with an allowed  
3 claim of 8.7 against debtors' Residential Funding Capital, LLC  
4 and GM -- which is defined as RFC -- and GMAC Mortgage, G-M-A-C  
5 Mortgage. The first paragraph tells you how they're resolving  
6 this, then in paragraph 22, they tell the carve-out. There's  
7 no carve-out for this claim against ResCap. They changed the  
8 deal, and they're standing here today lying about it, and  
9 that's very disturbing, Your Honor.

10                  THE COURT: You can tell me the deal's changed. You  
11 can't tell me they're lying about it.

12                  MR. MOLONEY: Your Honor, their explanations that  
13 they've --

14                  THE COURT: No --

15                  MR. MOLONEY: -- given today are --

16                  THE COURT: That, I don't want.

17                  MR. MOLONEY: Your Honor, I won't do that.

18                  THE COURT: I tried to make that clear earlier.

19                  MR. MOLONEY: And I apologize, Your Honor, but I can  
20 say that the explanation that they gave you today, that this  
21 was -- that the deal didn't change is inconsistent with this  
22 motion. I can tell you the reason they gave you for the change  
23 is not consistent with footnote 13, which suggests that it  
24 was -- that footnote suggests this was part of a planned  
25 discussion. That conversation was with persons in this

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1                   courtroom now, who called up and said you're not going to get  
2                   the 750 million dollars, or I think we're going to get some of  
3                   it.

4                   No one encouraged him to have this conversation. But  
5                   that deal should just PSA, and this separate allocation  
6                   agreement, which is a secret agreement, and which needs to be  
7                   public, and we need to understand what it is.

8                   THE COURT: Mr. Moloney, what I -- what is missing --  
9                   what I'm missing is why that's relevant to approval of the RMBS  
10                  settlement. Any agreement regarding allocation or waterfall or  
11                  any of that, there'll be --

12                  MR. MOLONEY: Okay. I think -- Your Honor --

13                  THE COURT: -- appropriate time.

14                  MR. MOLONEY: -- if I can just take you back to the  
15                  introductory remarks, the thesis that you heard from the  
16                  debtors' counsel, who said the thesis for collusion -- as to  
17                  which there's no evidence -- the thesis for collusion is that  
18                  there was a linkage between the RMBS settlement and the plan  
19                  support agreement. He said that was the thesis. He said there  
20                  was no evidence of that, but the thesis was that there was a  
21                  linkage.

22                  We now have that the first time that the RMBS  
23                  creditors think they're not getting the full benefit of the PSA  
24                  agreement, they change the settlement agreement. That shows  
25                  that there is a linkage now. Now, does that show that there

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1       was a linkage in the very beginning as well? Maybe yes, maybe  
2       no. But that's why we need a discovery into the process of how  
3       the sausage was made, how the settlement was done, what -- who  
4       was present, and who -- and the fact that they approved this  
5       amendment with no board representation, the fact that there  
6       were no business people involved; that you have just a -- you  
7       have an ability for the lawyers for AFI to speak to the lawyers  
8       for ResCap and for AFI to pull strings in this -- in the way  
9       this deal is being done, without any kind of business person in  
10      the middle or any record, that's the inference I'm drawing from  
11      this record.

12                  Now, it may not be -- I may not be able to show that,  
13       but if I do show, then when you go to approve this settlement,  
14       you're going to look at not where it meets the lower standard  
15       of fairness, which is the very deferential WT grant standard.  
16       You're going to look to wherever it's intrinsically fair. That  
17       will be the -- and that's how it will bear directly on that  
18       hearing. The standard you apply is if there was business  
19       judgment and if there was an arms length agreement, then  
20       there's a very, very generous standard long established in this  
21       circuit to approve settlements.

22                  If in fact you do not have business judgment, and if  
23       in fact it's not an independent process, then you apply a  
24       different standard.

25                  THE COURT: Who do you believe this so-called secret

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1 agreement is between?

2 MR. MOLONEY: Your Honor, I think the thesis was  
3 fairly --

4 THE COURT: Just tell me. You're being specific. You  
5 think there's a secret agreement. Who do you believe it's  
6 between?

7 MR. MOLONEY: I believe that the -- AFI has reached a  
8 deal here, essentially, with the -- with the debtors to give a  
9 large claim at the operating company level, which doesn't cost  
10 them any money, in return for their release under this PSA  
11 agreement. And that agree -- I think they're paying 750  
12 million dollars for that, and I believe there's a secret  
13 allocation of that 750 million dollars, which we've never been  
14 told about and which, if they're forced to become public about,  
15 there's going to be a disagreement about. That's what I  
16 believe.

17 THE COURT: Thank you, Mr. Moloney.

18 Before Mr. Princi speaks, Mr. Shore, do you want to be  
19 heard again? Let me ask you, are you satisfied with the --  
20 what Ms. Patrick described?

21 MR. SHORE: I think there's going to be -- have to be  
22 some work around the language when we see it. I'll ask them to  
23 put some things into the agreement, because, obviously, we're  
24 going to need to have a third amended agreement to be brought  
25 to the Court.

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1                   Let me just amplify two things. I've got maybe a  
2 little different theory, and not involving secret agreements or  
3 anything else. 8.7's a very big number. I think it had as  
4 much to do with the debtors' stated concerns all the time.  
5 We've done a lot of work, and we think 8.7's a reasonable  
6 number, as much as it had to do with it was a number that they  
7 could have attached, get some empty boxes that would satisfy  
8 people for distribution purposes, but would have other benefits  
9 for different people in different cases. It was a number that  
10 was workable, not necessarily the number --

11                  THE COURT: But, we'll ultimately find out --

12                  MR. SHORE: -- that they predict --

13                  THE COURT: -- whether the number is --

14                  MR. SHORE: Right.

15                  THE COURT: -- appropriate or not.

16                  MR. SHORE: Right.

17                  THE COURT: Okay?

18                  MR. SHORE: So that's the discovery. From testing the  
19 theory -- and getting back to what we're here to for today --  
20 with respect to discovery, we think we're entitled to discovery  
21 at the ResCap LLC board level of the original deal, the putting  
22 the HoldCo election in, taking the HoldCo election out and  
23 whether the board has been consulted with respect to some of  
24 this stuff today. I don't know.

25                  I think we're entitled to do that. We've asked for

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1       the minutes. We've asked for communications between ResCap LLC  
2       and a host of people regarding those issues. We think we're  
3       entitled to that. We think after we get those documents, we're  
4       entitled to either a 30(b)(6) witness or to the extent we find  
5       that somebody's fingerprints are at the board level, we'll ask  
6       for a specific person. But for the purposes of testing the  
7       theory about what's going on at ResCap LLC and the interface  
8       between the number, plan support agreement, AFI release,  
9       that -- in order to test that theory, we're going to need that  
10      discovery.

11                  To date, the debtors have said we're just going to  
12      defer it. We think it's totally irrelevant. We don't want to  
13      give it to you now. We're at the end of the discovery. It's  
14      not a lot. They should have produced the board minutes in any  
15      event with respect to things --

16                  THE COURT: That --

17                  MR. SHORE: -- that have gone on at --

18                  THE COURT: Let me just stop there. Producing the  
19      board minutes. Should, must be done. That's got nothing to do  
20      with anything else.

21                  UNIDENTIFIED SPEAKER: It's done.

22                  THE COURT: Okay. That -- okay.

23                  MR. SHORE: And then communications between ResCap LLC  
24      and different parties, and this gets again to that issue that  
25      the -- we're apparently not resolving today, which is if

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1       there's a communication between a ResCap attorney and the  
2       institutional investors' lawyer with respect to what we are  
3       doing about the HoldCo election, whether that's privileged or  
4       not. I don't think it is. I think if the lawyers are  
5       negotiating it, it should be produced. They're going to do  
6       what they're going to do with respect to that.

7                   They're going to schedule it in a privileged log, and  
8       I guess we're going to come back to Your Honor later to say  
9       that -- for Your Honor to determine if the -- if there was a  
10      statement yeah, but without the HoldCo election, we're pulling  
11      our PSA, whether that's a privileged communication or not.  
12      Okay, I get we're not going to do it today, but what we need to  
13      establish today is that we're not going to be told none of that  
14      discovery is relevant for the purposes of this motion.

15                  THE COURT: All right. Anybody else want to be heard?  
16       Let -- hold on a second. Go ahead.

17                  MR. ELLENBERG: If the Court please, Mark Ellenberg,  
18       Cadwalader, Wickersham & Taft, on behalf of MBIA.

19                  Your Honor, I rise just to make two points. First,  
20       MBIA has not --

21                  THE COURT: You didn't really mean it when you said  
22       never, under no circumstances should you ever approve this  
23       settlement?

24                  MR. ELLENBERG: It's not what we said, Your Honor.

25                  THE COURT: It's pretty close.

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1                   MR. ELLENBERG: It's not, Your Honor. And you were  
2 provided with the entire letter.

3                   THE COURT: Okay.

4                   MR. ELLENBERG: What we said was --

5                   THE COURT: Looked like the entire letter.

6                   MR. ELLENBERG: -- what we said was -- and we've  
7 clarified with the trustee since, what we said was do not  
8 charge our trusts expenses for your consideration of the  
9 settlement. And the reason that's what we said, Your Honor,  
10 was because we are the real party-in-interest in those trusts.

11                  Ms. Patrick's clients and Mr. Talcott's clients have  
12 not absorbed a single penny of damage --

13                  THE COURT: Tell me, Mr. Ellenberg, the letter that  
14 the debtors attached to their status report, which is a one-  
15 page letter; you're saying that's not a complete letter?

16                  MR. ELLENBERG: I'm sorry. It -- I didn't realize  
17 they attached the letter --

18                  THE COURT: Well, they did.

19                  MR. ELLENBERG: -- Your Honor. I read it on my iPad.  
20 I only saw the --

21                  THE COURT: They did. They --

22                  MR. ELLENBERG: -- quote.

23                  THE COURT: -- attached --

24                  MR. ELLENBERG: Okay.

25                  THE COURT: It's a one-page letter. It bears a

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1 signature of -- for David --

2 MR. ELLENBERG: David Glehan --

3 THE COURT: -- Glehan.

4 MR. ELLENBERG: -- Your Honor. Yes. And the --

5 THE COURT: And you're saying that's not a complete  
6 document?

7 MR. ELLENBERG: It is a complete document, Your Honor.  
8 And read in its entirety, what it says is --

9 THE COURT: I did it read it. It's only two  
10 paragraphs long.

11 MR. ELLENBERG: Okay. It doesn't say we're  
12 opting out. It says we will make the decision, not you. And  
13 that's because we have the right to make that decision --

14 THE COURT: When it says "We hereby instruct you not  
15 to consider or accept any settlement or compromise offers  
16 relating to any claims that may belong to the above referenced  
17 trust" and it goes on from there.

18 MR. ELLENBERG: It does go on, Your Honor.

19 THE COURT: That looks like pretty clear language.

20 MR. ELLENBERG: But, Your Honor, it goes on. All  
21 right, the point is we will give them an instruction at the  
22 appropriate time.

23 Your Honor, if I may?

24 THE COURT: Go ahead.

25 MR. ELLENBERG: No investor has suffered a penny of

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1 loss in the trust that we've insured. There have been lots of  
2 losses; over one and a half billion dollars worth, and we've  
3 absorbed every penny of those losses in our trusts, okay,  
4 because we are paying those claims pursuant to our insurance  
5 policies. Under the indentures and the insurance agreements,  
6 okay, that A, subrogates us to the claims of the investors.  
7 And so when Ms. Patrick talks about the claims she could bring  
8 in connection with the sale, for example, in our trust those  
9 are our claims. And under the indentures, as we read them, we  
10 have the ability to direct the trustees to take action with  
11 respect to litigation and, we believe, with respect to the  
12 settlement.

13                  We have not yet directed them. We will at some point.  
14 And we have genuinely not decided what position --

15                  THE COURT: What does that have to do with --

16                  MR. ELLENBERG: -- we're going to take on this  
17 subject.

18                  THE COURT: What does that have to do with  
19 scheduling -- with discovery --

20                  MR. ELLENBERG: Your Honor, I just assert -- I didn't  
21 bring up the subject, Your Honor. I just want to make the  
22 record very clear.

23                  THE COURT: It's late. I've got a 2 o'clock calendar.  
24 What does that have to do with setting a --

25                  MR. ELLENBERG: Okay. The --

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1                   THE COURT: -- discovery and trial schedule?

2                   MR. ELLENBERG: So let's talk about that, Your Honor.  
3                   I think the key question was your question of why does this  
4                   have to be done before the 5th. Why does this have to be done  
5                   before the sale? There is no reason. There is an agreement  
6                   that the trustees entered into that capped the claims, and that  
7                   permits these sales to go forward.

8                   Now, either there's a threat that if the schedule  
9                   changes somehow they'll get out of that agreement that's  
10                   embodied in an order, and they're trying to hold the sale  
11                   hostage, or they're not. So let's get that clear. But if the  
12                   sales are not being held hostage, I don't know why we are  
13                   trying to turn ourselves into pretzels to deal with the  
14                   schedule.

15                   The settlement is still moving around. And if the  
16                   debtors made every single commitment they promised to make  
17                   today -- which would be astonishingly good performance on their  
18                   part -- we would still be trying to squeeze ourselves into a  
19                   straw when we really need a fire hose.

20                   THE COURT: Okay. Anything else?

21                   MR. ELLENBERG: I mean, why are we doing this?

22                   THE COURT: Okay. Any other substantive points you  
23                   want to make, Mr. Ellenberg?

24                   MR. ELLENBERG: Your Honor, you read our points, and I  
25                   won't repeat them. Thank you.

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1                   THE COURT: Thank you very much. Anybody else who  
2 hasn't spoken yet want to be heard?

3                   MR. WYNNE: Your Honor, it's Richard Wynne from Jones  
4 Day on the phone for FGIC. If everyone in the courtroom's  
5 done, I just wanted to speak for a minute.

6                   THE COURT: Go ahead.

7                   MR. WYNNE: Thank you, Your Honor. I apologize for  
8 not being there.

9                   I'd really just like to make a few very short points.  
10 First, with respect to AFI, that's fairly easy. Effectively,  
11 only after our status report did we get the letter, or I think  
12 they crossed right at the same time. So I think with AFI we  
13 should be able to work out an agreement and get a production  
14 from them, so I don't think there's any issue there. But the  
15 fundamental issue that we tried to address in our status report  
16 was that we did very timely serve discovery on July 13th, I  
17 think, was the first date. We tried hard to work with the  
18 debtors. We had very serious delays. We've been aiming to a  
19 November 5th hearing date. We hired our own experts, we worked  
20 through their database, we told them in a timely way what the  
21 issues were with the database -- and they were considerable, as  
22 shown in our report. The production was very deficient.

23                   With respect to Ms. Patrick's harped point about good  
24 faith, at least (indiscernible) and what we've observed from  
25 other people, we've exerted an incredible amount of effort to

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1 try to make those deadlines, and it's simply proven impossible  
2 for all the reasons that you've heard. You know, just today  
3 Mr. Princi just said that the debtors spent a considerable  
4 amount of time analyzing and dealing with the rep and warranty  
5 claims. Well, that's the essence of what we wanted to see.  
6 This is a monumental claim that's going to very, very seriously  
7 impact this case. And the only thing that we saw with respect  
8 to internal memos, or e-mails, or analysis was on Monday, I  
9 think it was, they uploaded into the database a couple of pages  
10 of a board presentation, and it's sometime in May before they  
11 signed the agreement that dealt with that. We wanted to see  
12 those internal e-mails and analysis; they just haven't come and  
13 we don't know when they're going to come.

14 The last point I'd like to make with respect to that  
15 is on the sales linkage. As far as we can tell there's no  
16 provision in the scheduling order that gives the RMBS trustees  
17 the right to now change that agreement. And Your Honor made  
18 clear in that July 31st order it wasn't really just scheduling;  
19 in fact, they had to change the title because it was a  
20 substantive provision that people agreed to. But there was  
21 nothing in that order that required that the Court rule on the  
22 RMBS settlement motion before the November 19th sale hearing.  
23 There was nothing that said that Your Honor had to approve it  
24 or the sales couldn't go forward.

25 THE COURT: November 5th.

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1                   MR. WYNNE: Nothing -- excuse me, Your Honor. Well,  
2 the sale is November 19th --

3                   THE COURT: Yes.

4                   MR. WYNNE: -- the hearing. But there was nothing  
5 that said that the RMBS hearing couldn't be continued from  
6 November 5th if Your Honor needed more time. There was nothing  
7 that said that Your Honor was going to rule on November 5th or  
8 before the November 19th sales. So I think that there's no  
9 provision that we're aware of that would allow them to now back  
10 out of that. And in fact, the RMBS trustees have stood up in  
11 court I think the first time this was raised, and said that the  
12 institutional investors in fact cannot direct them to take  
13 action. They can direct them to consider the settlement, and  
14 under the schedule we have the RMBS trustees are going to first  
15 consider what to do and exercise their own fiduciary judgment  
16 after this Court approves of settlement, if it does. So I  
17 think the sale is really a red herring.

18                   Your Honor, that's it. Unless Your Honor had any  
19 questions.

20                   THE COURT: Thank you very much.

21                   All right. Anybody else on the phone or in court wish  
22 to be heard? Mr. Eckstein, and then I'll give you the --

23                   MR. ECKSTEIN: Your Honor, if I may before Mr.  
24 Princi --

25                   THE COURT: Go ahead.

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1 MR. ECKSTEIN: I just wanted to, if I can, try to  
2 return very briefly to the scheduling issues, which I think  
3 were the initial subject. I think the HoldCo election  
4 discussion really just indicates an example of the documents  
5 and the discovery that are needed. Your Honor, as we look at  
6 this process where we are today, the documents regarding the  
7 settlement and the negotiations and items pertaining to the  
8 reasonableness of the settlement are approximately one month  
9 late. As we see it, Your Honor, there's a need to push the  
10 9/24 fact discovery deadline by approximately thirty days.

11 The scheduling order gave the committee and other  
12 parties approximately three weeks from the conclusion of the  
13 discovery deadline to file an objection. I think that's a  
14 relevant date for the Court's consideration. As we see it,  
15 that date right now as we're looking at it needs to be pushed  
16 ahead.

17 THE COURT: I'm sorry. Which date?

18 MR. ECKSTEIN: That the date to file the objection.  
19 Right now the committee --

20 THE COURT: Right now it's October 15th.

21 MR. ECKSTEIN: October 15th. As we see it, Your  
22 Honor, that date needs to be moved out. And I'm not dealing  
23 with the impact of the sale right now; I think that's been  
24 discussed. We're simply looking at the schedule, Your Honor.  
25 We believe that this schedule requires approximately a thirty-

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2 day extension of the discovery deadline. And we think that the  
3 deadline for filing the objection of October 15th needs to be  
4 moved out to the middle of November.

5                   And, obviously, Your Honor, that has impacts on the  
6 schedule. As we're looking at the loan file production, that  
7 was approximately two weeks late, and we would expect that that  
8 deadline for the filing of the expert report should also  
9 benefit from an extension of that period by approximately two  
weeks, which would take it out to around October 24th or 25th.

10                  THE COURT: Well -- all right.

11                  Mr. Princi, you wanted to be heard?

12                  MR. PRINCI: I think, Your Honor, the particulars on  
13 moving the timeline and the schedule have to be discussed. I  
14 mean, so let me just real quick --

15                  THE COURT: They don't have to be. I mean, I can just  
16 order.

17                  MR. PRINCI: Or you could do that.

18                  THE COURT: But that's, you know --

19                  MR. PRINCI: Or you could do that.

20                  I'm just trying to say in terms of anything  
21 constructive, Judge, I mean, I think we --

22                  THE COURT: You don't think it would be constructive  
23 if I just rule.

24                  MR. PRINCI: Okay. So, Judge, real quickly. With  
25 respect to the points made by Mr. Moloney, number one I think

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1 he said July 30 was the date when we began -- when we made the  
2 HoldCo amendment; that's nottrue.

3 THE COURT: Well, he read for me the original -- the  
4 initial motion, and I don't have it open in front of me so --  
5 he read from -- that talked about fixing the claim against the  
6 two operating entities, not against HoldCo.

7 MR. PRINCI: Right. And that's what caused, Judge --  
8 and that's what caused the need to have to do the second  
9 amended agreement. So this is the flow. The first agreement  
10 says in the first line that "the agreements entered into  
11 between Residential Capital LLC" -- that's the HoldCo -- "and  
12 its direct and indirect subsidiaries, collectively ResCap,  
13 defined as ResCap to the debtors". And then in Article 5,  
14 Section 5.1 it says "ResCap, the defined term, hereby makes in  
15 irrevocable offer to settle and ResCap will provide the general  
16 unsecured claim of 8.7".

17 We explained in the motion where we thought those  
18 monies would come from. Now, that gets to the so-called --  
19 what did he call it? -- the secret document. So secret that A,  
20 it's referenced in the plan support agreement that was filed  
21 the first day. B, it was put in the data room on July 9th --

22 THE COURT: What does the document show?

23 MR. PRINCI: It shows what the debtors anticipated --  
24 what the debtors anticipate the waterfall will be, under the  
25 present Ally settlement agreement, into the various estates and

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1 out to the various creditors.

2 THE COURT: Has it changed since the beginning of the  
3 case?

4 MR. PRINCI: No. So that was filed -- the secret  
5 document was put into the data room --

6 THE COURT: But is the document in the data room? Has  
7 it changed -- has the proposed waterfall or allocation changed  
8 since it was put into the data room?

9 MR. PRINCI: No. Footnote 13 refers to the following.  
10 One of the noteholders called Ms. Patrick -- as I was told. As  
11 I was told -- and basically construed this agreement  
12 differently than as it's worded. And I think based on that,  
13 that gave the institutional investors concern, as Mr. Wofford  
14 was saying: that there was a need to make a clarification  
15 about this, and that's what led to the second amended  
16 settlement agreement and the HoldCo election. The secret  
17 document was also sent to Mr. Moloney's partners -- one of the  
18 other -- one of his partners, either Mr. Lightner or Mr. O'Neal  
19 on August 22nd. So I don't know why Mr. Moloney refers to  
20 it --

21 THE COURT: Okay. I don't need to hear any more  
22 about --

23 MR. PRINCI: -- as a secret.

24 THE COURT: -- about that.

25 MR. PRINCI: Okay. Fair enough. And so let me get to

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1       a couple of points, Judge, that I think are more relevant, and  
2       that relates to the schedule.

3                   I think Mr. Eckstein said that he just heard today who  
4       the people were that knew -- that were involved in the  
5       negotiations; that's incorrect. We served them with  
6       interrogatory responses on September 14th and on the second  
7       page -- excuse me, in the answer to the first interrogatory  
8       response to the first interrogatory it explains that "the  
9       people who played the greatest role and had the most  
10      responsibility in the negotiation of the RMBS trust settlement  
11      agreement on behalf of the debtors are" and then it lists  
12      myself, Mr. Lee, Ms. Levitt, Mr. Newton and Mr. Clark from my  
13      firm; Ms. Hamzehpour, Mr. Thompson, Mr. Ruckdaschel and Mr.  
14      Cancelliere from the debtors. It lists Mr. Nolan and Mr. Renzi  
15      from FTI Consulting. It lists Mr. Puntus and Mr. Chopra from  
16      Centerview Partners. So it is not the case that we had not  
17      made that information available to people.

18                  THE COURT: Okay. I've heard enough.

19                  MR. PRINCI: With respect --

20                  THE COURT: Mr. Princi, I've heard enough.

21                  MR. PRINCI: Okay. Your Honor, may I just make a  
22      request for the depositions? The depositions are going to go  
23      to the topic that the examiner is covering. The depositions  
24      are not intended to really find out what we said to Ms.  
25      Patrick; that's not what people are alleging. The collusion

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1       they're alleging isn't really that we colluded with Ms.  
2       Patrick. The collusion they're alleging is that ResCap and  
3       Ally were colluding. And I don't know, Judge, how it is and  
4       why it is that that should be undertaken now when we're  
5       dealing -- when the people who are going to otherwise be  
6       deposed are the very people, Judge, on a day in and day out  
7       basis, full-time -- example of full-time.

8                   Ms. Hamzehpour lives in Minnesota, or she used to,  
9       because what she does now is she comes to our offices, and we  
10      have an office for her at Morrison & Foerster. And she works  
11      out of that office because we need her input literally every  
12      day for twelve hours. Literally. So people want -- while  
13      we're dealing with an auction, while we're dealing with all the  
14      lift stay motions we get, while we're dealing with plan  
15      considerations people want to take these people and depose them  
16      because of the allegation concerning our relationship with Ally  
17      that's presently being looked into by the examiner. It's just  
18      another way of dealing with that allegation. Nobody really  
19      contends that the institutional investors and ResCap were in  
20      collusion.

21                  THE COURT: Okay. Let me stop you. Mr. Princi, when  
22      will your expert be completed with their work?

23                  UNIDENTIFIED SPEAKER: Your Honor, are you asking  
24      about a supplemental declaration?

25                  THE COURT: No. I'm asking for whatever you intend to

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1 offer at the trial in this matter. When will your expert --  
2 when will your expert's report be completed so that anybody who  
3 wishes to can take your expert's deposition?

4                   MR. PRINCI: The final expert -- okay, Judge. The way  
5 the scheduling order was set up, it's --

6                   THE COURT: I know what the scheduling order said.

7                   MR. PRINCI: Okay. Understood.

8                   THE COURT: But a lot of the dates haven't happened  
9 already, and so I'm asking you a question. If you're sticking  
10 to what the schedule said, fine.

11                  MR. PRINCI: Judge, I'm not -- I misunderstood you. I  
12 needed clarification. Thank you. Just let me find it, Judge,  
13 sorry. I just -- Your Honor, I just --

14                  THE COURT: All expert -- all discovery, everything  
15 was supposed to be over by October 12th. Everything, okay.  
16 That's in paragraph 9. Any expert report was supposed to be  
17 filed by October 8th. That's paragraph 8.

18                  MR. PRINCI: Oh, here it is, Judge. Okay. I'm just  
19 trying to see when we --

20                  THE COURT: It's not a trick question.

21                  MR. PRINCI: No. No. No. I understand, Judge. I'm  
22 literally on my feet just trying to make sure I answer  
23 correctly. I think it was October -- in paragraph 11 it says  
24 "any reply to objections, including any rebuttal expert  
25 reports, shall be filed and served by October 29".

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1                   THE COURT: Mr. Bentley?

2                   MR. BENTLEY: Your Honor, if it helps, I think the  
3 operative condition is in paragraph 6 of the scheduling order,  
4 the last saying says the debtors will file a supplemental  
5 expert report not later than September 24th.

6                   THE COURT: Okay.

7                   MR. PRINCI: That's correct, Judge.

8                   THE COURT: And now you're sticking to that date?

9                   MR. PRINCI: We have no problem with that, Your Honor.

10                  THE COURT: All right. I'm going to provide you with  
11 several dates that are fixed and unchangeable, and what I  
12 expect is that you will promptly meet and confer and fill in  
13 the rest of the schedule based on the dates I'm giving you now.  
14 The November 5th hearing is being moved, and it will occur on  
15 November 13, 14 and 16. The other date I'm going to give you  
16 is November 6th, one week before the hearing. Everything needs  
17 to be filed with the Court one week before. And by  
18 everything -- I mean, things can -- the last of the filings  
19 with the Court has to be one week before, November 6th. Dates  
20 can and should be staggered before that, but this is a  
21 complicated matter. This is not the only thing I have between  
22 November 6th and November 13th. You need to agree on the date  
23 for the cutoff of all fact discovery, all expert discovery, and  
24 it seems to me listening to you that that could be the same  
25 date. But it ordinarily wouldn't be, but it sounds like the

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1       materials on which the experts are relying is substantially  
2       produced already.

3                   MR. PRINCI: That's correct, Your Honor.

4                   THE COURT: And so this is not -- this doesn't strike  
5       me as the usual case; we have to wait for the conclusion of  
6       fact discovery before experts can do their reports.

7                   All of this is premised on Mr. Princi's representation  
8       to the Court that all discovery by the debtors will be  
9       completed by October 3rd. Rolling production until then, but  
10      completed no later than October 3rd, and that the privilege log  
11      will be provided no later than October 10th. I didn't hear  
12      anyone really -- with respect to Ally, it sounds like those  
13      discovery issues have been resolved.

14                  MR. PRINCI: I just wanted to clarify that's not with  
15      respect to the so-called alter ego discovery.

16                  THE COURT: Well, with respect to alter ego, in light  
17      of the agreement to amend the RMBS settlement to make clear  
18      that the amount is reserved -- alter ego is off the table for  
19      purposes of this hearing.

20                  MR. PRINCI: Okay.

21                  THE COURT: It's off the table for discovery, and in  
22      taking alter ego off I'm also taking the HoldCo election off.  
23      What is relevant to the Court is the agreement -- I think the  
24      only change that's being made to what was circulated yesterday  
25      is this agreement with respect to -- there's no -- the amount

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1       of any allowed claim against HoldCo is left open.

2                   MR. PRINCI: Other than the cap.

3                   THE COURT: Yeah.

4                   MR. PRINCI: Yes.

5                   THE COURT: Other than the cap.

6                   MR. PRINCI: Yes.

7                   THE COURT: Correct.

8                   MR. PRINCI: That's correct, Your Honor.

9                   THE COURT: So I'm persuaded that the history of the  
10 HoldCo election -- how it got in, how it came out, the  
11 release -- in my view is not relevant or material to the issues  
12 that the Court will have to decide at this hearing. What is  
13 relevant and material to it is the decision process by which  
14 the settlement is approved. And so if amendments were never  
15 approved by the board, that's relevant.

16                  As part of your agreement with respect to a discovery  
17 schedule -- now, if you can't work it out contact chambers  
18 promptly. I mean, this should be worked out within the next  
19 day or so. If you can't, arrange a telephone conference and  
20 I'll just set the dates. You ought to be able to do it. Just  
21 set this -- I'm not questioning the good faith of everybody in  
22 agreeing on this schedule. I'm not questioning the good faith  
23 of parties in going forward with discovery. You are where you  
24 are. It's complicated, there's a lot of discovery.

25                  I think it's important -- and maybe it's already

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1       happened. There seems to be some disagreement about it -- as  
2       to identification of individuals with knowledge about the  
3       settlement negotiations and the settlement. Disclosure of the  
4       identities of those individuals should happen --

5                   MR. PRINCI: That's been complete already.

6                   THE COURT: I don't want to get into a disagreement  
7       about whether it has or it hasn't happened, okay? If it has,  
8       that's great.

9                   MR. PRINCI: It has.

10                  THE COURT: If not, I mean, like within the next two  
11       days there better be just accurate disclosure of anyone who is  
12       involved. With respect to the depositions of lawyers, I will  
13       not permit depositions of outside counsel at this time.  
14       Depositions of in-house counsel of those individuals who were  
15       substantially involved in negotiations of a settlement in the  
16       Court's view are proper and should go forward.

17                  If there's an assertion of privilege with respect to  
18       specific questions, I'm not ruling on that. I'm not ruling  
19       that there's no privilege that attaches, but what I am ruling  
20       is that the settlement -- everybody has indicated it was  
21       substantially negotiated by counsel. Ms. Hamzehpour, the  
22       general counsel was substantially involved, Mr. Cancelliere,  
23       Mr. Nolan, Mr. Renzi, Mr. Puntus, Mr. Chopra, all identified  
24       today as having been involved. They clearly should be deposed.  
25       No depositions of outside counsel without further order of the

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1 Court. And I hope that will be unnecessary. If there's a  
2 further dispute about it, promptly arrange for a telephone  
3 conference with the Court and I'll endeavor to resolve it  
4 promptly.

5 It's too late in the day to put issues off in the  
6 hopes that they'll go away. That's well and good, but not with  
7 the schedule. So meet and confer properly; if you can't  
8 resolve it arrange a call and I will resolve it. These dates  
9 that I'm giving you, November 13th, 14th and 16th, if the  
10 hearing doesn't happen on those days it won't happen until next  
11 year. I want it to happen on those days. It depends on  
12 everybody moving forward and cooperating. But just to make it  
13 clear, I don't think November 5th is a realistic date in light  
14 of where we are in the discovery schedule today. And I think  
15 good cause has been established to move the hearing date, and  
16 that's what I've done, and those are the only days that I have  
17 that I can do this. The hearing will be limited to three days.

18 The court's closed on the 12th, otherwise we would  
19 have the hearing on the 12th. So the 13th, right now ResCap is  
20 on the calendar for the 13th. Borders is on the calendar as  
21 well. I will move the Borders' hearing date. On the 14th  
22 Grubb & Ellis is on the calendar and we will move that date.  
23 The 15th is MF Global and I can't change -- I'm not changing  
24 that. I guess you're on and General Maritime in the afternoon,  
25 is that -- I can't change the 14th. The 13th and 14th, you

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1     need -- it's important now -- this is going to be a timed  
2     trial. You need to try and agree on the allocation of time.  
3     If you can't -- if the parties-in-interest can't agree I will  
4     make the allocation. I don't mind on the 13th and 14th running  
5     late into the evening on both of those days. On the 16th, on  
6     Friday, I will not run court past 5 o'clock, so the 16th we  
7     have to end by 5. On the 13th and 14th I will listen to  
8     what -- the good faith estimates of the amount of time  
9     required.

10                  Typically, what I do with a timed trial -- here there  
11    are many more parties opposing or objecting at this stage;  
12    maybe some of those will be resolved, and some of those were  
13    limited objections, but there are a number of major contestants  
14    to this settlement. They obviously need to confer; I'm not  
15    going to allow any duplication of effort. All direct  
16    examination should be in written narrative form with the  
17    declarants available for cross-examination in court. That's  
18    why I want the papers a week in advance, because I will have  
19    read everything before the hearing. All exhibits need to be  
20    pre-marked, moving party numbering, objectors lettering  
21    exhibits. Everything has to be -- you need to coordinate  
22    because everything has to have a unique identifier.

23                  I would like to have a telephone conference to discuss  
24    what will hopefully be a finalized schedule this Friday,  
25    September 21 at 2 p.m. So you have until to work out any of

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1 these dates. You ought to be able to do that.

2                   Any other issues?

3                   MR. PRINCI: No, Your Honor.

4                   THE COURT: Anybody else have -- anybody want to be  
5 heard?

6                   All right. We're adjourned.

7                   MR. PRINCI: Thank you, Judge.

8                   (Whereupon these proceedings were concluded at 1:29 PM)

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C E R T I F I C A T I O N

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3 I, Zipporah Geralnik, certify that the foregoing transcript is  
4 a true and accurate record of the proceedings.

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ZIPPORAH GERALNIK

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AAERT Certified Electronic Transcriber CET\*\*D 489

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Date: September 20, 2012

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|----------|--|---|--|---|
| <b>A</b> | <p>across (2)<br/>54:3;96:24</p> <p><b>ability</b> (5)<br/>54:7;94:22;108:25;<br/>121:7;128:10</p> <p><b>able</b> (15)<br/>32:23;44:9;54:8;<br/>74:15;76:8,9;77:2;<br/>96:6;99:10;107:25;<br/>114:7;121:12;<br/>130:13;142:20;146:1</p> <p><b>above</b> (2)<br/>106:7;127:16</p> <p><b>absence</b> (2)<br/>24:9;65:5</p> <p><b>absolute</b> (1)<br/>68:4</p> <p><b>absolutely</b> (4)<br/>15:5;23:24;64:15;<br/>113:16</p> <p><b>absorbed</b> (2)<br/>126:12;128:3</p> <p><b>abundance</b> (2)<br/>57:21,25</p> <p><b>accept</b> (10)<br/>31:15;42:12,22,23,<br/>25;43:4;56:9;66:14;<br/>114:9;127:15</p> <p><b>acceptable</b> (1)<br/>35:4</p> <p><b>access</b> (2)<br/>48:10;63:7</p> <p><b>accommodated</b> (2)<br/>68:15;91:3</p> <p><b>accommodating</b> (1)<br/>72:18</p> <p><b>accommodation</b> (1)<br/>79:16</p> <p><b>accomplish</b> (1)<br/>55:9</p> <p><b>accomplished</b> (1)<br/>75:16</p> <p><b>accordance</b> (1)<br/>21:25</p> <p><b>according</b> (2)<br/>85:10;87:15</p> <p><b>account</b> (3)<br/>11:10;21:1;44:14</p> <p><b>accurate</b> (1)<br/>143:11</p> <p><b>accurately</b> (1)<br/>103:3</p> <p><b>accuse</b> (1)<br/>22:24</p> <p><b>achieve</b> (1)<br/>61:16</p> <p><b>acknowledge</b> (2)<br/>28:19;56:3</p> <p><b>acknowledged</b> (1)<br/>54:19</p> <p><b>acknowledging</b> (1)<br/>29:12</p> | <p><b>advised</b> (1)<br/>16:21</p> <p><b>advisor</b> (1)<br/>22:2</p> <p><b>advisors</b> (3)<br/>40:22,25;41:1</p> <p><b>action</b> (3)<br/>99:8;128:10;<br/>132:13</p> <p><b>activity</b> (1)<br/>97:18</p> <p><b>actual</b> (2)<br/>102:6,6</p> <p><b>actually</b> (10)<br/>31:13;61:13;65:13;<br/>78:17,20;86:2,20;<br/>93:13,22;103:10</p> <p><b>acute</b> (1)<br/>57:3</p> <p><b>Ad</b> (2)<br/>10:3;99:11</p> <p><b>add</b> (2)<br/>41:13;96:15</p> <p><b>added</b> (1)<br/>40:16</p> <p><b>additional</b> (2)<br/>34:6;77:1</p> <p><b>additionally</b> (1)<br/>12:19</p> <p><b>address</b> (9)<br/>13:4;27:21;31:25;<br/>36:18;37:23;97:11;<br/>114:7;115:10;130:15</p> <p><b>addressed</b> (3)<br/>57:3,4;85:15</p> <p><b>addresses</b> (1)<br/>25:9</p> <p><b>addressing</b> (2)<br/>23:6;42:19</p> <p><b>adhere</b> (1)<br/>64:1</p> <p><b>adjourned</b> (1)<br/>146:6</p> <p><b>adjudication</b> (4)<br/>12:5,11;20:15,17</p> <p><b>adjusted</b> (3)<br/>32:25;43:16,17</p> <p><b>adjustment</b> (1)<br/>61:4</p> <p><b>advance</b> (1)<br/>145:18</p> <p><b>advantageous</b> (2)<br/>15:10;89:2</p> <p><b>adversaries</b> (1)<br/>48:20</p> <p><b>adversary</b> (1)<br/>48:14</p> <p><b>adverse</b> (2)<br/>42:4;84:12</p> <p><b>adversely</b> (1)<br/>105:5</p> <p><b>advice</b> (8)<br/>27:15;28:9,16,20,<br/>21;29:13,19;59:5</p> | <p><b>114:23;131:20</b></p> <p><b>agreeing</b> (2)<br/>94:20;142:22</p> <p><b>agreement</b> (105)<br/>12:1,3;13:25;14:1;<br/>20:13,21;21:10,17,<br/>18,19,20;24:21;25:7,<br/>15,23;26:7;38:8;<br/>42:12;43:17;45:25;<br/>48:5;49:19;50:8,24;<br/>52:18,22;53:1,3,24;<br/>57:18;58:9,9;63:25;<br/>64:20,23;80:21;82:9,<br/>21;83:22;84:3,4,15,<br/>25;91:2;95:4;96:25;<br/>97:7,18;98:10,10;<br/>100:5,14,16,20;<br/>101:14,20;102:18,18,<br/>23;103:6,16,17;<br/>105:1;106:18;107:7;<br/>108:10,16;110:22;<br/>111:7,8;113:12,17,<br/>19;114:23;117:3,9;<br/>120:6,6,10,19,24,24;<br/>121:19;122:1,5,11,<br/>23,24;124:8;129:5,9;<br/>130:13;131:11,17;<br/>135:9,9,20,25;<br/>136:11,16;137:11;<br/>141:17,23,25;142:16</p> <p><b>against</b> (47)<br/>20:18;21:1;24:9,9,<br/>13;48:5;80:1,13,15,<br/>19;90:21;93:10,20;<br/>94:20,22;95:2;97:13,<br/>16,21;98:13;99:19;<br/>100:6,16;101:13;<br/>102:5;104:22;105:2,<br/>6;106:1,9,19;107:8,<br/>24;109:23;110:1;<br/>111:8,9;112:12,14,<br/>16;115:19,21;119:3,<br/>7;135:5,6;142:1</p> <p><b>aggressive</b> (3)<br/>43:13;78:7;79:8</p> <p><b>agitated</b> (2)<br/>83:25;84:1</p> <p><b>ago</b> (1)<br/>118:21</p> <p><b>agree</b> (21)<br/>49:25;59:14;72:10,<br/>17;89:24;93:11;97:4;<br/>100:1,7;104:5;<br/>106:17;107:23;<br/>110:4,9;111:17;<br/>115:18,23;122:11;<br/>140:22;145:2,3</p> | <p><b>allow</b> (9)<br/>62:19;93:20;95:10;<br/>97:12,16;98:13;<br/>99:13;132:9;145:15</p> <p><b>allowance</b> (1)<br/>106:12</p> <p><b>allowed</b> (12)<br/>13:8;20:21;21:1;<br/>42:5;80:1;98:5,15;<br/>104:9,20;106:16;<br/>119:2;142:1</p> <p><b>allows</b> (3)<br/>64:21;99:5,6</p> <p><b>Ally</b> (22)<br/>7:12,12,21,21;<br/>13:23;14:1;41:23;<br/>45:4,9,11;47:14;<br/>49:1;50:18;53:19;<br/>55:2,16;58:11;70:7;<br/>135:25;138:3,16;<br/>141:12</p> <p><b>Ally's</b> (3)<br/>45:18,24;46:6</p> <p><b>already-settled</b> (1)<br/>104:21</p> <p><b>alt</b> (1)<br/>107:9</p> <p><b>alter</b> (54)<br/>12:4;20:19;21:14;<br/>22:14;35:8;80:13;<br/>81:9,13;82:1,8,10;<br/>85:23;86:1,4,5,7;<br/>88:19,20;95:7,8;<br/>98:16;99:19;100:15;<br/>101:12,15,21;104:17,<br/>20,24,24;105:4,7,14,<br/>17;107:9,22;108:1,2;<br/>109:21;110:12;<br/>111:10,11;112:11,18,<br/>19;113:4,21,24;<br/>116:6;117:3;141:15,<br/>16,18,22</p> <p><b>alternative</b> (3)<br/>17:6;60:6,7</p> <p><b>although</b> (3)<br/>49:22;59:13;66:10</p> <p><b>ALVES</b> (1)<br/>9:16</p> <p><b>always</b> (7)<br/>31:2,16,17;33:1;<br/>34:24;106:20;116:2</p> <p><b>amend</b> (4)<br/>96:15;110:21;<br/>114:23;141:17</p> <p><b>amended</b> (13)<br/>12:1,2;19:25;20:2;<br/>79:20;80:21;83:13;<br/>100:20;108:10,16;<br/>122:24;135:9;136:15</p> <p><b>amendment</b> (8)<br/>16:21;22:13;81:11;<br/>82:9,19;110:5;121:5;<br/>135:2</p> |
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